(22,467, 22,480, and 22,522.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 846.

THE UNITED STATES, APPELLANT,

vs.

THE READING COMPANY, THE PHILADELPHIA & READING RAILWAY COMPANY, ET AL.

FILED JANUARY 5, 1911.

No. 859.

THE TEMPLE IRON COMPANY, APPELLANT,

vs.

THE UNITED STATES.

FILED JANUARY 14, 1911.

No. 901.

THE READING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES.

FILED FEBRUARY 13, 1911.

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1 *Certificate of the Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania:

I, Henry B. Robb, Clerk of the Circuit Court of the United States of America, for the Eastern District of Pennsylvania in the Third Circuit hereby certify that the six volumes numbered I to VI, inclusive, hereto annexed and hereinunder described, contain a true and complete transcript of the record and proceedings had in said Court in the cause in equity originally entitled the United States of America vs. Reading Company and others, wherein an appeal has been prayed and allowed to the Supreme Court of the United States, as the same remains of record and on file in my office.

Said Vol. I contains 881 pages numbered 1 to 881,
Said Vol. II contains 745 printed pages numbered 1 to 745,
Said Vol. III contains 511 printed pages numbered 1 to 511,
Said Vol. IV contains 718 printed pages numbered 1 to 718,
Said Vol. V contains 512 printed pages numbered 719 to 1230,
Said Vol. VI contains 604 printed pages numbered 1 to 604.

In testimony whereof, I have hereunto subscribed my name and caused the seal of said Court, to be affixed at the City of Philadelphia, in the Eastern District of Pennsylvania, Third Circuit, this Third day of January, in the year of our Lord one thousand nine hundred and eleven and of the Independence of the United States the one hundred and thirty-fifth.

[Seal Circuit Court of the United States, E. D. Pennsylvania.]

HENRY B. ROBB, *Clerk.*

2 THE UNITED STATES OF AMERICA,
Eastern District of Pennsylvania:

At a stated term of the Circuit Court of the United States for the Eastern District of Pennsylvania, begun and held in the United States Court House and Post Office Building in the City of Philadelphia on the twenty-first day of February, 1910.

Present: The Honorable George Gray, Joseph Buffington and William M. Lanning, Circuit Judges.

Among others the following proceedings were had in a proceeding in equity wherein the United States of America was Petitioner and The Reading Company and others were defendants, to wit:

3 (*Docket Entries in Circuit Court U. S., E. D. of Pa.*)

April Session, 1907.

No. 27.

J. Whitaker Thompson,
Charles J. Bonaparte,
Alex. Simpson, Jr.,
G. Carroll Todd, M. D. Purdy.

Willard, Warren & Knapp, John G. Johnson, Robert W. de Forest, George F. Brownell, Collins & Corbin, Herbert A. Taylor, Charles Heebner, John L. Seager, Welles & Torrey, Jas. H. Torrey, Wm. S. Opdyke.

The United States of America
vs.
The Reading Company, The Philadelphia and Reading Railway Company, The Lehigh Valley Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Central Railroad Company of New Jersey, The Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The Philadelphia and Reading Coal and Iron Company, The Lehigh Valley Coal Company, The Lehigh and Wilkes-Barre Coal Company, The Pennsylvania Coal Company, The Hillside Coal and Iron Company, The New York, Susquehanna and Western Coal Company, and The Temple Iron Company *et al.*

(For additional defendants see amended petition.)

1907, June	12.	Petition filed.
" "	12.	Petition for leave to serve non-resident defendants filed.
" "	12.	Subpœnas exit returnable the first Monday of August next.
" "	18.	Duplicate subpœna returned served as to Erie Railroad Company, one of the defendants, with certified copy of petition and order and filed.
" "	20.	Duplicate subpœna returned "served" as to The Central Railroad Company of New Jersey and as to The New York, Susquehanna and Western Railroad Company with copy original petition and order and filed.
" July	20.	Duplicate subpœna returned served as to New York, Susquehanna & Western Coal Co., together with copy of order and bill of complaint, and filed.
" August	2.	Order for the appearance of Willard, Warren & Knapp, Esquires, for Temple Iron Company, one of the defendants, filed.

1907, August 4 — 2. Order for the appearance of John G. Johnson, Esquire, for Lehigh Valley Railroad Company and Lehigh Valley Coal Company, defendants, filed.

1907, August 3 — 3. Order for the appearance of Robert W. de Forest Esquire, for The Lehigh and Wilkes-Barre Coal Co., one of the defendants, filed.

" " — 3. Order for the appearance of Robert W. de Forest, Esquire, for The Central Railroad Company of New Jersey, one of the defendants, filed.

" " — 5. Order for the appearance of George F. Brownell, Esquire, for Erie Railroad Company, filed.

" " — 5. Order for the appearance of Collins and Corbin, Esquires, for New York, Susquehanna and Western Railroad Company and New York, Susquehanna and Western Coal Company, defendants, filed.

" " — 5. Subpœna returned served with copy of petition as to The Reading Company; The Philadelphia and Reading Railway Company; The Philadelphia and Reading Coal and Iron Company; The Lehigh and Wilkes-Barre Coal Company and The Temple Iron Company; The Lehigh Valley Railroad Company and The Lehigh Valley Coal Company, and as to The Delaware, Lackawanna & Western Railroad Company, The Central Railroad Company of New Jersey, The Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The Pennsylvania Coal Company, The Hillside Coal and Iron Company and New York, Susquehanna and Western Coal Company not found in the District, and filed.

" " — 5. Order for the appearance of Herbert A. Taylor, Esquire, for The Hillside Coal and Iron Company, defendant, filed.

" " — 5. Order for the appearance of George F. Brownell, Esquire, for Pennsylvania Coal Company, defendant, filed.

" " — 5. Order for the appearance of Charles Heebner, Esquire, for Reading Company, defendant, filed.

" " — 5. Order for the appearance of Charles Heebner, Esquire, for Philadelphia and Reading Railway Company, defendant, filed.

" " — 5. Order for the appearance of Charles Heebner, Esquire, for The Philadelphia and Reading Coal and Iron Company, defendant, filed.

1907, August 5		5. Order for the appearance of John L. Seager, Esquire, for Delaware, Lackawanna and Western Railroad Company, defendant, filed.
1907, August		5. Order for the appearance of Sam'l Dickson, Esquire, for The Central Railroad Company of New Jersey and Lehigh and Wilkes-Barre Coal Company, defendants, filed.
"	"	5. Duplicate subpœna returned "served" as to Hillside Coal Company, Pennsylvania Coal Company, Lehigh and Wilkes-Barre Coal Company, Delaware and Lackawanna and Western Railroad Company and New York, Susquehanna and Western Railroad Company with copy of petitions and order, and filed.
"	"	31. Separate Answer of Philadelphia and Reading Railway Company filed.
"	"	31. Separate answer of Reading Company filed.
"	"	31. Separate answer of Philada. & Reading Coal and Iron Co. filed.
"	September	3. Separate Answer of Temple Iron Company filed.
"	"	9. Separate Answer of Erie Railroad Company filed.
"	"	9. Separate Answer of the New York, Susquehanna and Western Coal Co. filed.
"	"	9. Separate Answer of The New York, Susquehanna and Western Railroad Co. filed.
"	"	9. Separate Answer of Pennsylvania Coal Company filed.
"	"	9. Separate Demurrer of Hillside Coal and Iron Company filed.
"	"	12. Separate Answer of Lehigh Valley Railroad Company filed.
"	"	12. Separate Answer of The Lehigh Valley Coal Company filed.
"	"	13. Separate Answer of the Central Railroad Company of New Jersey filed.
"	"	13. Separate Answer of The Lehigh and Wilkes-Barre Coal Company filed.
"	"	23. Separate Answer of The Delaware, Lackawanna and Western Railroad Company filed.
"	October	7. Petition for leave to amend Original Petition filed and Order of Court granting prayer thereof.
"	"	17. Amendment to original petition by adding as defendants therein The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, The Elk Hill Coal and Iron Company, the St.

6 Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the Peoples Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parrish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, and Mrs. Sarah Drexel Van Rensselaer, executrix under the will of John R. Fell, deceased, co-partners, trading as A. Pardee and Company, Lafayette Lentz, William O. Lentz, and Lewis A. Riley, copartners, trading as Lentz and Company, William Law and John M. Robertson, co-partners, trading as Robertson and Law, Richard White, W. R. McTurk, and Robert White, co-partners, trading as E. White Company, Joseph J. Jermyn, and George B. Jermyn, Emma J. Jermyn and Joseph J. Jermyn, as executors of John Jermyn, deceased, and Michael T. Dolphin, filed.

1907, October 17. Certificate of the Attorney General under Act of 11th February, 1903, filed.

" " 19. Order to place on Argument List sur demurrer of Hillside Coal Company filed.

" " 24. Order for the appearance of John G. Johnson, Esquire, for The Pennsylvania Company for Insurances on Lives and Granting Annuities filed.

" November 7. Order for the appearance of Welles & Torrey, Esquires, for Joseph J. Jermyn and George B. Jermyn, Emma Jermyn and Joseph J. Jermyn, executors of John Jermyn, deceased, filed.

" " 9. Order for the appearance of John G. Johnson, Esquire, for Mary F. W. Howe, Frank Pardee and Mrs. Sarah Drexel Van Rensselaer, Executrix under the will of John R. Fell, deceased, co-partners, trading as A. Pardee & Co., filed.

" " 11. Order for the appearance of Jas. H. Torrey and Wm. S. Opdyke, Esquires, for The Delaware & Hudson Company filed.

1907, Novemder 25. Stipulation and order extending time for filing answer of Delaware and Hudson Company
7 one of the defendants filed.

1907, November 25. Stipulation and order extending time for filing answer of Joseph J. Jermyn, George Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, Executors of John Jermyn, deceased, filed.

" " 26. Subpœna returned "Summoned William Law" and "copy subpœna, petition and amendment &c." and filed.

" " 26. Subpœna returned "served" as to The Mercantile Trust Co., The Delaware and Hudson Co., and The Elk Hill Coal & Iron Co. and "copy original and amended petition" &c. and filed.

" " 29. Subpœna returned "service accepted" as to Raub Coal Company "with copy of petition and amendment" &c. filed.

" " 30. Subpœna returned "served" as to Melville Coal Company, Mount Lookout Coal Company, Nay Aug Coal Company, Lackawan-a Coal Company, Austin Coal Company, Clarence Coal Company, Joseph J. Jermyn, Enterprise Coal Company, North End Coal Company, Greenridge Coal Company, John Jermyn Estate, Peoples Coal Company, Parrish Coal Company, Red Ash Coal Company, Raub Coal Company, George F. Lee Coal Company, John M. Robertson, Clear Spring Coal Company, Pardee Coal Company, Dolph Coal Company, Llewellyn Coal Company, Michael F. Dolphin, Price-Pancoast Coal Company with copy of original petition and amendment and filed.

" December 2. Order of Court granting leave to withdraw Demurrer filed by Hillside Coal and Iron Company and directing an answer to be filed on the first Monday of January, 1908.

" " 2. Order for the appearance of R. H. Patterson, Esquire and Welles & Torrey, Esquires, for Peoples Coal Company filed.

" " 2. Order for the appearance of Welles & Torrey, for Enterprise Coal Company filed.

" " 2. Order for the appearance of Welles & Torrey, Esquires, for North End Coal Company filed.

" " 2. Order for the appearance of Welles & Torrey, Esquires, for Green Ridge Coal Company, filed.

1907, November 2. Order for the appearance of William Drayton, Esquire, for Mrs. Sarah Drexel Van Renssalaer, Executrix, under will of John R. Fell, deceased, filed.
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1907, December 2. Order for the appearance of Samuel Dickson, Esquire, for Lafayette Lentz, William O. Lentz, and Lewis A. Riley, filed.
" " 2. Order for the appearance of Herbert A. Taylor, Esquire, for Clarence Coal Company, filed.
" " 2. Order for the appearance of J. C. Bedford, Esquire, for The St. Clair Coal Company, Richard White and Robert White, filed.
" " 2. Order for the appearance of Thomas F. Wells, Esquire, for Nay Aug Coal Company, filed.
" " 2. Order for the appearance of Thomas F. Wells, Esquire, for Pine Hill Coal Company, filed.
" " 2. Order for the appearance of George R. Bedford, Esquire, for Raub Coal Company, filed.
" " 2. Order for the appearance of George R. Bedford, Esquire, for Clear Spring Coal Company, filed.
" " 2. Order for the appearance of W. W. Watson, Esquire, for the Austin Coal Company, filed.
" " 2. Order for the appearance of Willard, Warren and Knapp, Esquires, for Mount Lookout Coal Company.
" " 2. Order for the appearance of Willard, Warren and Knapp, Esquires, for Lackawanna Coal Company, Limited, filed.
" " 2. Order for the appearance of Willard, Warren and Knapp, Esquires, for Melville Coal Company, filed.
" " 2. Order for the appearance of Willard, Warren and Knapp, Esquires, for Michael F. Dolphin, filed.
" " 2. Order for the appearance of John McGohren, Esquire, for George F. Lee Coal Company, filed.
" " 2. Order for the appearance of H. W. Palmer, Esquire, for Parrish Coal Company and Dolph Coal Company, filed.
" " 2. Order for the appearance of J. E. Burr, Esquire, for Price-Pancoast Coal Company.
" " 2. Order for the appearance of J. E. Burr, Esquire, for Elk Hill Coal and Iron Company, filed.
" " 2. Order for the appearance of Benjamin W. Cumming, Jr., Esquire, for Buck Run Coal Com-
9 Company, filed.
1907, December 2. Order for the appearance of Thomas H. Atherton, Esquire, and Benjamin R. Jones, Esquire, — Red Ash Coal Company, filed.
" " 2. Order for the appearance of H. Gordon McCouch, Esquire, for Mid Valley Coal Company, filed.

1907, December	2.	Order for the appearance of Alexander & Green, Esquires, for The Mercantile Trust Company, filed.
" "	2.	Order for the appearance of William H. Jessup, Esquire, for William Law and John M. Robertson, co-partners trading as Robertson & Law, filed.
" "	4.	Subpœna returned "served" with copy of Original Petition and Amended Petition on Pine Hill Coal Company, Buck Run Coal Company, Robert White and Richard White, St. Clair Coal Company, Mary Howe, Sarah Drexel Van Rensselaer, Executrix of the Estate of John Fell, deceased, W. R. McTurk, Lewis A. Riley, William O. Lentz, and "service accepted" as to Pennsylvania Company for Insurances on Lives and Granting Annuities, and Lafayette Lentz, and filed.
" "	4.	Subpœna returned "served" with copy of original petition, &c., as to Mid Valley Coal Co., &c., filed.
" "	13.	Separate Answer of the Pennsylvania Company for Insurances on Lives and Granting Annuities filed.
" "	20.	Separate Answer of the Red Ash Coal Company filed.
" "	20.	Separate Answer of the George F. Lee Coal Company filed.
" "	31.	Joint and Separate Answer of Mary W. F. Howe, Frank Pardee and Sarah Drexel Van Rensselaer, Executrix under the will of John R. Fell, deceased, co-partners trading as A. Pardee and Company, filed.
1908, January	2.	Answer *by* the Austin Coal Company filed.
" "	2.	Separate Answer of the Buck Run Coal Company filed.
" "	3.	Separate Answer of the Dolph Coal Co., Limited, filed.
" "	3.	Separate Answer of the Raub Coal Company
10		filed.
1908, January	3.	Separate Answer of the Clear Spring Coal Company filed.
" "	3.	Separate Answer of the Parrish Coal Company filed.
" "	4.	Separate Answer of the Lackawanna Coal Company, Limited, filed.
" "	4.	Separate Answer of M. F. Dolphin filed.
" "	4.	Separate Answer of the Melville Coal Company filed.
" "	4.	Separate Answer of the Mt. Lookout Coal Company filed.

1908, January 4. Separate Answer of the Mercantile Trust Company to petition of United States as amended, filed.
" " 4. Separate Answer of The St. Clair Coal Company filed.
" " 4. Joint and separate answer of Lafayette Lentz, William O. Lentz and Lewis A. Riley, copartners trading under the name of Lentz & Company, filed.
" " 6. Separate Answer of Elk Hill Coal and Iron Company filed.
" " 6. Separate Answer of Pine Hill Coal Company filed.
" " 6. Separate Answer of the Nay Aug Coal Company filed.
" " 6. Separate Answer of the Price-Pancoast Coal Company filed.
" " 6. Separate Answer of The Delaware and Hudson Company filed.
" " 6. Joint and several answer of Joseph J. Jermyn and George B. Jermyn, Emma J. Jermyn and Joseph J. Jermyn, Executors of John Jermyn, deceased, filed.
" " 6. Separate Answer of The Enterprise Coal Company filed.
" " 6. Separate Answer of The North End Coal Company filed.
" " 6. Separate Answer of the Green Ridge Coal Company filed.
" " 6. Separate Answer of The Peoples Coal Company filed.
" " 6. Separate Answer of the Clarance Coal Company filed.

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1908, January 6. Separate Answer of the Hillside Coal and Iron Company filed.
" " 7. Separate Answer of Robertson & Law filed.
" " 13. Separate Answer of Mid Valley Coal Company filed.
" " 13. Order for the appearance of Samuel Dickson, Esquire, for Mid Valley Coal Company filed.
" " 15. Disclaimer of Robert White filed.
" " 15. Separate Answer of Richard White filed.
" " 21. Præcipe for order for decree pro confesso as to Llewellyn Mining Company, filed.
" " 21. Replication filed.
" " 28. Printed copy of Replication filed.
" " 30. Order appointing Charles H. Guilbert Examiner, filed.
" April 22. Order of Examiner setting time and place for beginning taking of testimony on part of plaintiff filed.

1908, September 16. Order fixing time for taking testimony filed.
1909, February 23. Complainant's *prima facie* proofs and Exhibits filed.
" March 4. Printed copy of Complainant's *prima facie* proofs and Exhibits filed.
" " 25. Motion to strike out certain portions of testimony filed.
" April 2. Motion to dismiss petition filed.
" " 6. Stipulation to amend motion to dismiss petition filed.
" " 12. Motion of Elk Hill Coal and Iron Company to dismiss petition filed.
Motion of Pine Hill Coal Company to dismiss petition filed.
Motion of Nay Aug Coal Company to dismiss petition filed.
Motion of Price-Pancoast Coal Company to dismiss petition filed.
Motion of complainant for order limiting defendants' time for taking testimony filed.
Order of court directing that defendants conclude the taking of testimony by July 1, 1909, &c., filed.
12

1909, November 13. Testimony on behalf of defendants filed.
Exhibits on behalf of defendants filed.
Printed copy of testimony on behalf of defendants filed.
Printed copy of exhibits on behalf of defendants filed.
Complainant's exhibits filed.
Complainant's rebuttal evidence filed.
" " 18. Motion of Temple Iron Company to dismiss petition filed.
" " 19. Complainant's Printed copy of testimony filed.
" " 20. Complainant's Printed Exhibits filed.
" December 6. Order fixing time for filing brief, &c.
1910, January 5. Stipulation to incorporate certain account into Examiner's record filed.
" February 16. Motion of Lehigh Valley Railroad Company and Lehigh Valley Coal Company to strike out testimony filed.
" " 21–24. Argued.
" " 24. Order for the appearance of Jackson E. Reynolds, Esquire, for Central Railroad Company of New Jersey and Lehigh and Wilkes-Barre Coal Company filed.
" December 8. Opinion, Gray, J., sur. final hearing filed.
Opinion, Buffington, J., sur. final hearing filed.
Opinion, Lanning, J., sur. final hearing filed.
Per Curiam order filed.

1910, December 16. Argued sur. settlement of decree.
" " 20. Final Decree filed.
Petition for appeal by the United States filed.
Assignment of Errors by the United States filed.
Order allowing appeal to the United States filed.

13 [*Original Petition. Filed June* 12, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

April Sessions, 1907. No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
THE READING COMPANY, THE PHILADELPHIA AND READING RAILway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, Corporations, Defendants.

Petition.

To the Honorable the Judges of the Circuit Court of the United States of America for the Eastern Judicial District of Pennsylvania, sitting in equity:

Your petitioner, the United States of America, by J. Whitaker Thompson, its attorney for the Eastern District of Pennsyl-
14 vania, acting under the direction of its Attorney-General, brings this, its petition, against the Reading Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Philadelphia and Reading Railway Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Lehigh Valley Railroad Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Delaware Lackawanna and Western Railroad Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Scranton; the Central Railroad Company of New Jersey, a corpora-

tion created and existing under the laws of the State of New Jersey and having its principal office in that State at Jersey City; the Erie Railroad Company, a corporation created and existing under the laws of the State of New York and having its principal office in that State in the Southern Judicial District thereof at the city of New York; the New York, Susquehanna and Western Railroad Company, a corporation created and existing under the laws of the State of New Jersey and having its principal office in that State at Jersey City; the Philadelphia and Reading Coal and Iron Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Lehigh Valley Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Lehigh and Wilkesbarre Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Philadelphia; the Pennsylvania Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Dunmore; the Hillside Coal and Iron Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Scranton; the New York, Susquehanna and Western Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Wilkes-Barre; and the Temple Iron Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Eastern Judicial District thereof at Reading.

16 And on information and belief your petitioner complains and says:

I.

The defendants, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, hereinafter called the defendant carriers when referred to collectively, are common carriers engaged in interstate transportation, particularly in the transportation of anthracite coal from the mines in Pennsylvania to the markets of that and other States; the defendants the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkes-barre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, and the New York, Susquehanna and Western Coal Company, hereinafter called the defendant coal companies when referred to collectively, own and operate anthracite coal mines in the State of Pennsylvania, and buy, sell, and otherwise deal in anthracite coal

in the markets of the several States; the defendant, the Temple Iron Company, also owns and operates anthracite mines in the State of Pennsylvania; the defendant, the Reading Company, is the holding corporation of the "Reading system;" it holds the entire capital stock of the Philadelphia and Reading Railway Com-
17 pany and of the Philadelphia and Reading Coal and Iron Company and a majority in interest of the capital stock of the Central Railroad Company of New Jersey.

II.

With the exception of a line operated by the Pennsylvania Railroad Company and one operated by the New York, Ontario and Western Railway Company, the defendant carriers operate the only lines of railroad between the anthracite coal fields in Pennsylvania and tide-water points in that and other States, and in the absence of the restraints imposed by the unlawful contracts and combinations hereinafter charged and described, they would be active competitors in the transportation of anthracite coal from the mines to the tide-water markets. The defendant, the Delaware, Lackawanna and Western Railroad Company, also operates a line of railroad from the anthracite fields to Oswego on Lake Ontario and Buffalo on Lake Erie and other points in central and western New York, and the New York, Ontario and Western Railway Company also operates a line of railroad from the anthracite fields to Oswego on Lake Ontario and other points in western New York. Furthermore, save the lines of the Pennsylvania Railroad Company and the New York, Ontario and Western Railway Company, and the line of the Delaware and Hudson Company, which runs to northern New York and does not extend to tide water, the defendant carriers operate the only lines of railroad that penetrate into the anthracite coal regions, and since practically all other agencies of transportation that
18 served those regions have been supplanted by railroads, the defendant carriers, with the exceptions stated, furnish and control the only means of transporting anthracite coal from the mines in Pennsylvania to the markets and distributing points in that and other States, particularly the great markets and distributing points at tide water in the vicinity of the city of New York; and further, inasmuch as the Pennsylvania Railroad and the New York, Ontario and Western Railway tap only comparatively small fraction of the total number of collieries, the last named extending to but one of the four fields into which the anthracite region is divided, to wit, the northern, the defendant carriers furnish and control, without exception, the sole means of transportation from the great majority of the anthracite collieries to tide water. In the year 1905 the total tonnage of anthracite coal transported from the mines was divided among the several railroads in the following proportions, to wit:

	Per cent.
Philadelphia and Reading Railway Company	20.48
Lehigh Valley Railroad Company	16.40
Delaware, Susquehanna and Schuykill Railroad Company[a]	2.61
Delaware, Lackawanna and Western Railroad Company	15.56
Central Railroad Company of New Jersey	13.00
Erie Railroad Company, New York, Susquehanna and Western Railroad Company	10.14
	78.19
Pennsylvania Railroad Company	7.96
Delaware and Hudson Company	9.19
New York, Ontario and Western Railway Company	4.66
	100.00

[a]Within the past year this, a short local line between Drifton and Gowen, Pennsylvania, has passed under the control of the Lehigh Valley Railroad Company.

19 III.

The franchises of the defendant, the Delaware, Laskawanna and Western Railroad Company, authorize it to own and operate coal mines in the State of Pennsylvania and to buy and sell coal, as well as to transport persons and property as a common carrier, all of which it does. The remaining defendant carriers are without lawful power, under the constitution and laws of the State of Pennsylvania, to operate coal mines or to buy, sell, or otherwise deal in coal for profit, but they do so indirectly through the means and instrumentality of the defendant coal companies, which they respectively control or which are controlled in their interest. That is to say, the Reading Company, the holding corporation of the "Reading system," which holds the entire capital stock of the Philadelphia and Reading Railway Company, also holds the entire capital stock of the Philadelphia and Reading Coal and Iron Company, and the three companies have the same president; the Lehigh Valley Railroad Company owns all the capital stock of the Lehigh Valley Coal Company, and the two companies have the same president; the Central Railroad Company of New Jersey owns nine-tenths of the capital stock of the Lehigh and Wilkesbarre Coal Company, and the two companies have the same president, who is also president of the Reading Company, the Philadelphia and Reading Railway Company, and the Philadelphia and Reading Coal and Iron Company; the Erie Railroad Company owns all the capital stock
20 of the Pennsylvania Coal Company and a large majority of the capital stock of the Hillside Coal and Iron Company, and the three companies have the same president; the New York, Susquehanna and Western Railroad Company owns nearly all the capital stock of the New York, Susquehanna and Western Coal Com-

pany, and the two companies have the same president, who is also president of the Erie Railroad Company, the Pennsylvania Coal Company, and the Hillside Coal and Iron Company; and other anthracite coal-mining companies, unknown to your petitioner, are controlled by or in the interest of the defendant carriers, or some of them, through the ownership of controlling stock interests. The defendant carriers and the subsidiary defendant coal companies which they control, respectively, or which are controlled in their interest, are, for all practical purposes, one and the same, and the identity between them has been recognized by the Supreme Court of the United States (Interstate Commerce Commission v. Baird et al., decided April 4, 1904, 194 U. S., 25) and by other courts.

IV.

Anthracite coal is an article of prime necessity and is universally used for domestic purposes throughout the New England and Middle Atlantic States, and to a great extent in other sections of the country. The source of the entire supply, save a few small deposits of inferior quality, is located within the State of Pennsylvania, and the deposits extend over an area of only about 484 square miles, divided,
21 for trade purposes, into three "regions," namely, the Wyoming (sometimes called the Lackawanna) region, the Lehigh region, and the Schuylkill region, and for geographic and geologic purposes, into four "fields" or "basins," namely, the northern field, the eastern middle field, the western middle field, and the southern field, the Wyoming region embracing the northern field, the Lehigh region the eastern middle field and the southern field east of Tamaqua, and the Schuylkill region the western middle field and the southern field west of Tamaqua. The defendant carriers and the defendant, the Reading Company, either directly or through their subsidiary companies, the defendant coal companies, own or control 90 per cent, approximately, of the entire unmined area of anthracite, distributed in substantially the following proportions, to wit:

	Per cent.
Reading Company	44.00
Lehigh Valley Railroad Company	16.87
Delaware, Lackawanna and Western Railroad Company	6.55
Central Railroad Company of New Jersey	19.00
Erie Railroad Company	2.59
New York, Susquehanna and Western Railroad Company	.54
	89.55

And they produce, either directly or through the agency of these coal companies, much the larger part, to wit, from 70 to 75 per cent, approximately, of the annual supply of anthracite. There are, however, a large number of independent or individual operators, as those individuals, firms, and corporations are called, who mine anthracite either from their own properties or from properties
22 leased by them, and who, therefore, would be free from the control of the defendant carriers were it not for the unlawful

contracts hereinafter referred to; and these independent operators produce, approximately, from 20 to 25 per cent of the annual supply of anthracite (the residue being produced by the anthracite carriers not parties hereto), which would come in competition in the great distributing centers with the anthracite produced by the defendant carriers or their agencies, the defendant coal companies, were it not for the unlawful contracts, combinations, and conspiracies hereinafter charged and set forth, which not only stifle competition between the several defendant carriers or their agencies in the sale of anthracite coal throughout the several States, but also between such defendant carriers or their agencies and the aforesaid independent operators.

V.

The surplus output of anthracite—that is, that part of the output not consumed in the State of Pennsylvania—is carried chiefly to tide water at New York Harbor, and is thence distributed, by water and by railroad, to points in the New England and Middle Atlantic States where the great bulk of the anthracite output is consumed. New York Harbor is thus the principal distributing point for anthracite coal, and, therefore, to fix or regulate the price of that commodity in that market is to fix or regulate its price in the markets of the several States which get their supply through New York Harbor points.

23

VI.

In January, 1892, competition between the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, and the Philadelphia and Reading Railroad Company (the predecessor in title of the defendant, the Philadelphia and Reading Railway Company), "in the procuration and transportation of coal, and between each of them and the Delaware, Lackawanna and Western Railroad Company, the Delaware and Hudson Canal Company, and the Pennsylvania Railroad Company, each of which is possessed of interests in the anthracite coal region and the means of transportation therefrom, [having] materially reduced the price of coal to consumers in this State [New Jersey] and elsewhere, to the loss of considerable profit to each of the companies named, which would not have been suffered if competition between them had not existed" (Stockton, Attorney-General, v. Central Railroad Co. et al., 50 N. J. Eq., 52, 56), the said three railroads, namely, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, and the Philadelphia and Reading Railroad Company, which together owned or controlled 80 per cent, more or less, of the entire anthracite deposits and transported 50 per cent, more or less, of the total anthracite tonnage, attempted to combine and unite under a common source of control by means of certain indentures of lease under which all the railroad and coal properties of the Lehigh Valley Railroad Company and the Central Railroad Com-

24 pany of New Jersey, the lessors passed to the control of the Philadelphia and Reading Railroad Company for the period

of 999 years. This long step in the direction of an anthracite coal monopoly was defeated, however, and the rule of competition restored, by the decree of the chancellor of the State of New Jersey in the case of Stockton, Attorney-General, v. Central Railroad Company et al. (supra), adjudging to be null and void the lease of the properties of the Central Railroad Company of New Jersey to the Philadelphia and Reading Railroad Company, through the medium of the Port Reading Railroad Company, the nominal lessee, which was controlled by the said Philadelphia and Reading Railroad Company; and this decree was followed the next year, 1893, by the recision of the lease between the Philadelphia and Reading Railroad Company and the Lehigh Valley Railroad Company.

VII.

The average price of anthracite coal at tide water, taking for illustration the stove size, which rose from $3.71 and $3.85 a ton in 1890 and 1891, respectively, prior to the leases just described, to $4.15 and $4.19 a ton in 1892 and 1893, respectively, the years during which the said leases were in force, again declined, under the influence of competition, the years immediately following the cancellation of the leases, falling to $3.60 a ton in 1894 and $3.12 a ton in 1895. Whereupon, in violation of the provisions
25 of sections 1 and 2, respectively, of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stats., 209), the defendant, the Reading Company, and the defendant carriers, and the defendant coal companies, owning or controlling 90 per cent, more or less, of all the anthracite deposits, and producing 75 per cent, more or less, of the annual anthracite supply, and controlling all the means of transportation between the anthracite mines and tide water save the railroads operated by the Pennsylvania Railroad Company and the New York, Ontario and Western Railway Company, which, as aforesaid, reach only a limited number of collieries, entered into an agreement scheme combination, or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain, and monopolize, and have controlled, regulated, restrained, and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States and its price and sale throughout the several States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced. As steps in the development of this illegal combination, and in furtherance of its illegal purposes, the defendants herein named, or some of them, engaged in and became parties to the following additional acts,
26 schemes, and contracts, among others, in violation of the aforesaid act of July 2, 1890:

(*a*) While, as stated (paragraph IV hereof), the defendant carriers and their subsidiary companies, the defendant coal companies, control 90 per cent, more or less, of the anthracite deposits, yet, as

also stated (paragraph IV hereof), the independent operators mine from 20 to 25 per cent of the annual supply of anthracite; and in order to prevent the output of the independent mines from being sold throughout the several States in competition with the output of their own mines or the mines of their subsidiary coal companies, the said defendant carriers, having almost a complete monopoly of the means of transportation between the anthracite mines and tide water, entered into and now maintain an agreement, combination, or conspiracy to use their power as such carriers to obtain control of the sale and disposition of the aforesaid output of the independent mines in the markets of the several States, particularly in the great distributing market at New York Harbor, in violation of the aforesaid act of July 2, 1890, that is to say: The said defendant carriers, either directly or through the instrumentality of their subsidiary companies and agents, the defendant coal companies, severally made with a large majority of the independent operators along their respective lines at divers times subsequent to 1892 substantially uniform contracts for a term ending in 1900, which in form were contracts for the sale of the independents' output to the carrier or its coal company for a stated percentage of the average price
27 prevailing at tide water, 55 per cent at times and at other times 60 per cent in the case of prepared sizes of anthracite, that is, all sizes above pea coal, and somewhat smaller percentages in the case of pea coal and sizes below that. Upon the termination of these contracts the said defendant carriers, either directly or through the instrumentality of their said subsidiary companies and agents, the defendant coal companies, in pursuance of a previous agreement between themselves, severally offered to make and did make and conclude with nearly all the independent operators along their lines new contracts containing substantially uniform provisions agreed upon beforehand by the defendant carriers in concert, some of the operators contracting with one of the defendants and some with another; in which contracts the independent operators severally agreed to deliver, on cars at the breakers, to one or the other of the defendant carrie-s or its subsidiary coal company, as the case might be, all the anthracite coal thereafter mined from any of their mines now opened and operated or which they might thereafter open and operate, deliveries or shipments to be made from time to time as called for by the said carriers of their subsidiary coal companies; in consideration whereof the said carriers or their subsidiary coal companies severally agreed to pay the independent operators for prepared sizes of anthracite 65 per cent of the general average free-on-board prices of like sizes prevailing at tide-water points at or near New York, as computed from month to month, and for pea coal and sizes
28 below that proportionably smaller percentages, declining as the sizes decline; and the defendant carriers controlling, as aforesaid, all the lines of transportation between the anthracite regions and tide water save those of the Pennsylvania Railroad Company and the New York, Ontario and Western Railway Company, and therefore controlling the rates for the transportation of anthra-

cite to tide water except in respect to the output of the limited number of collieries reached by the lines of the said Pennsylvania Railroad Company and New York, Ontario and Western Railway Company, acting either directly or through the agency of their subsidiary coal companies, fixed the said percentages to be paid by them or their coal companies under said contracts at a point that bore such a relation to the published rates of transportation, that, taking for a basis the average tide-water price of anthracite when the contracts were made and during many years previous (barring strike periods), the independent operator who entered into one of these contracts realized upon his coal from 15 to 50 cents more a ton, approximately (depending upon the length of the haul and variations in the tide-water price), than was realized by the independent operator who shipped his coal to tide water on his own account, paying the published rates of transportation himself, and sold it there in competition with the coal of the defendant carriers and their coal companies, which difference or advantage represents the amount per ton
29 that the defendant carriers or their coal companies paid for the privilege of controlling the sale and disposition of the independent output so as to prevent it from selling in competition with the output of their own mines, as aforesaid. The result of this arrangement, as was intended, was to draw, if not to force, the great majority of the independent operators into making the aforesaid contracts, thereby enabling the defendant carriers and their subsidiary companies, the defendant coal companies, to control absolutely and until the mines are exhausted the output of most of the independent anthracite mines, and to prevent it, as aforesaid, from being sold in competition with the output of their own mines in the markets of the several States, particularly in the great tide-water markets. And while said contracts are cast in the form of contracts of sale, in reality they are but mere devices to stifle competition and create a monopoly in the sale of anthracite coal throughout the several States in the manner aforesaid. The independent operators who have entered into these contracts are unknown to your petitioner, but it prays that they may be made parties hereto when they shall become known. A copy of the printed form used by the defendants in making contracts of the class described in this paragraph is hereto annexed, marked "Exhibit A," to be read as a part hereof.

(*b*) In or about the month of January, 1898, the defendants, the Erie Railroad Company and the New York, Susquehanna and
30 Western Railroad Company, which operate substantially parallel, and in the absence of a restraining agreement or combination, competitive lines of railroad between the anthracite coal regions in Pennsylvania and tide-water points at New York Harbor, and the then owners and holders, who are unknown to your petitioner, of a large majority of the shares of capital stock of each of said railroad companies, in violation of the aforesaid act of July 2, 1890, made and entered into an agreement or combination under and by virtue of which the said defendant, the Erie Railroad Company, issued additional shares of its capital stock to the par value of $26,000,000, half first preferred and half common stock, which it offered

and the aforesaid majority stockholders of the New York, Susquehanna and Western Railroad Company received and accepted in exchange for their shares in the last-named railroad company, thereby uniting and bringing together under a common head and source of control the two formerly competitive railroad companies and their subsidiary coal companies, with the result of removing all inducement for competition between them and establishing a monopoly of the interstate transportation, particularly the transportation of anthracite coal, formerly carried on by them as competitors, and with the further result of removing all inducement for competition between them or between their coal companies in the sale of coal throughout the several States, both of which results helped to unify and consolidate the aforesaid unlawful combination formed
31 by all the defendants to control the transportation and sale and fix the price of anthracite coal throughout the several States. And, irrespective of the aforementioned agreement or combination between the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company and their respective stockholders, the said Erie Railroad Company, in thus issuing additional shares of its capital stock and giving them in exchange for a large majority of the shares of capital stock of its rival and competitor, the said New York, Susquehanna and Western Railroad Company, and thereby acquiring control and mastership of the latter, monopolized the transportation between the several States formerly carried on by the two companies as competitors, and in so doing violated section 2 of the aforesaid act of July 2, 1890.

(*c*) In or about the month of January, 1901, the defendant, the Reading Company, owning the entire capital stock of the defendants, the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company; and the said defendant, the Philadelphia and Reading Railway Company; and the defendant, the Central Railroad Company of New Jersey, owning nine-tenths of the capital stock of the defendant, the Lehigh and Wilkesbarre Coal Company, and operating a line of railroad between the anthracite regions in Pennsylvania and tide-water points in the vicinity of New York Harbor that is substantially
32 parallel to, and in the absence of a restraining agreement or combination would be a competitor for traffic with, the line of railroad operated between the same points by the said defendant, the Philadelphia and Reading Railway Company; and the then owners and holders, who are unknown to your petitioner, of a large majority of the shares of capital stock of the said defendants, the Reading Company and the Central Railroad Company of New Jersey, in violation of the aforesaid act of July 2, 1890, made and entered into an agreement or combination under and by virtue of which the said defendant, the Reading Company, created additional shares of its capital stock and issued additional bonds, to wit, $3,017,650 of first preferred stock, $1,713,750 of second preferred stock, par value, and $23,000,000 of bonds, due in 1951, which it gave in exchange for a majority, to wit, 145,000 shares, of the capital stock of the said defendant, the Central Railroad Company of New Jersey, thereby

uniting and bringing together under a common head and source of control the said Philadelphia and Reading Railway Company and Central Railroad Company of New Jersey, operating parrallel and competitive lines of railroad, and the said Philadelphia and Reading Coal and Iron Company and Lehigh and Wilkesbarre Coal Company, contolling, as before stated (paragraph IV hereof), 63 per cent of the entire anthracite deposits, with the result of destroying every motive for competition between said railroad or railway companies and establishing a monopoly of the interstate transportation, particularly the transportation of anthracite coal, formerly
33 carried on by them as competitors, and with the further result of destroying every motive for competition between the said coal companies in the sale of coal throughout the several States; which results consolidated and made more compact and powerful the aforesaid unlawful combination formed by all the defendants to control the transportation and sale and fix the price of anthracite coal throughout the several States. And, irrespective of the aforementioned agreement or combination between the Reading Company, the Central Railroad Company of New Jersey, and the Philadelphia and Reading Railway Company, and their respective stockholders, the said Reading Company, which, as aforesaid, owns the entire capital stock of the Philadelphia and Reading Railway Company, a competitor of the said Central Railroad Company of New Jersey, as hereinbefore shown, in thus issuing additional shares of its capital stock and additional bonds and giving them in exchange for a majority of the shares of capital stock of the said Central Railroad Company of New Jersey and thereby acquiring control and mastership of the latter, monopolized the transportation between the several States formerly carried on by that company and the said Philadelphia and Reading Railway Company as competitors, and in so doing violated section 2 of the aforesaid act of July 2, 1890.

(*d*) During the year 1898 a large number of independent operators in the Wyoming and Lehigh regions, who had become dissatisfied with the small profit that their coal yielded under the
34 conditions of transportation then existing and which were brought about by the combination of the defendant carriers controlling nearly all the means of transportation to tide water, determined and agreed to promote the construction of a new line of railroad from the regions where their mines were located to tide water; and for that purpose they caused the New York, Wyoming and Western Railroad Company to be organized under the laws of the State of Pennsylvania. The firm of Simpson & Watkins, independent operators owning eight collieries in the Wyoming region and mining 1,500,000 tons of anthracite annually, more or less, were the chief supporters of this movement. Large subscriptions were made to the capital stock of the company, surveys of its line were made, 7,000 tons of steel rails were purchased, and the tonnage of the aforesaid independent operators not already pledged by contract was pledged to it. The construction of this independent railroad would not only have introduced competition into the transportation of anthracite coal to tide-water points, but it would also have enabled

the independent operators to sell their coal at those points in free competition with the coal of the defendant carriers and their subsidiary coal companies, because it would have furnished them with the means of getting their coal to the tide-water markets free from the control and domination which the defendant carriers, having a virtual monopoly of the means of transportation from the mines to tide water, can and do exercise over the sale of the coal of the independent operators where there is no independent or competing line
35 of railroad to tide water, as hereinbefore charged and set forth (paragraph VII*a* hereof). Wherefore, in order and intending to shut out such competition in the transportation of anthracite coal from the mines to other States and in the sale thereof throughout the several States, the defendants, the Reading Company (which, as aforesaid, owns the entire capital stock of the Philadelphia and Reading Railway Company), the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, in violation of the aforesaid act of July 2, 1890, entered into an agreement, combination, and conspiracy to prevent, and did thereby prevent, the completion of the projected independent and competing railroad by diverting and drawing away from it the support and influence of its principal promoters and those who would have furnished it with a large part of its tonnage, and at the same time and by the same act pooled and divided among themselves, except the Reading Company, the traffic, to wit, 1,500,000 tons annually, more or less, which moved from the collieries theretofore owned by the said firm of Simpson and Watkins to market points in other States. That is to say, the said defendants last named purchased, or caused to be purchased in their interest, the entire capital stock, to wit, $240,000, of the defendant, the Temple Iron Company, which at that time simply operated a small iron furnace near
36 Reading, Pennsylvania, but whose charter also authorized it to own and operate coal mines. Thereafter, to wit, on February 27, 1899, through a series of contemporaneous transactions, this company, acting for the aforesaid defendants, acquired at a high price the eight collieries of the firm of Simpson and Watkins, who, as stated, were the chief supporters of the proposed independent railroad, and in payment therefor it issued to the said firm additional shares of its capital stock to the amount of $2,260,000, par value, and its bonds to the amount of $3,500,000, par value. On the same date the firm of Simpson and Watkins assigned and transferred this stock and $2,100,000 of the bonds to the Guaranty Trust Company of New York, and in consideration for the transfer received from the said trust company $3,238,396.66 in cash and certificates of beneficial interest for $1,000,000 of the capital stock of the Temple Iron Company. Contemporaneously with this cash payment by the Guaranty Trust Company and as a condition thereof, the stock and bonds of the Temple Iron Company being of little value standing alone, the aforesaid defendants, in furtherance of their unlawful object, each entered into an agreement with the Guaranty Trust

Company and the Temple Iron Company to purchase a stated proportion of the capital stock of the latter company and to guarantee the payment of an annual dividend of 6 per cent on that proportion
of its capital stock, and also to guarantee the payment of the
37 same proportion of the bonded indebtedness, principal and interest, of the said Temple Iron Company, the said proportions, which were based on the percentage of the total anthracite tonnage carried annually by each of the aforesaid defendants, being distributed as follows, considering the Reading Company and the Philadelphia and Reading Railway Company as one and the same in this connection: The Reading Company, 29.96 per cent; the Lehihgh Valley Railroad Company, 22,88 per cent; the Central Railroad Company of New Jersey, 17.12 per cent; the Delaware, Lackawanna and Western Railroad Company, 19.52 per cent; the Erie Railroad Company, 5.84 per cent, and the New York, Susquehanna and Western Railroad Company, 4.86 [4.68] per cent. Subsequent agreements between the Guaranty Trust Company and these defendants, all dated April 10, 1899, provided extra judicial means for enforcing the obligations undertaken by the latter in the agreements of February 27, 1899. Thus through the concerted action of the aforesaid defendants in the acquisition of the collieries of Simpson and Watkins, the projected New York, Wyoming and Western Railroad Company lost its chief supporters and half, or nearly half, of its prospective tonnage, causing its construction to be abandoned, with the result of once more throttling competition in the transportation and sale of anthracite coal; and through the same concerted action in acquiring in agreed proportions, as hereinbefore
described, proprietorship in common of the eight collieries
38 formerly owned by Simpson and Watkins, those of the aforesaid defendants, to wit, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, whose lines of railroad serve the immediate region where those collieries are situated, in effect pooled and divided among themselves the tonnage moving therefrom, thereby shutting out competition in its transportation.

(*e*) Later in the year 1899, and after the abandonment of the projected New York, Wyoming and Western Railroad Company, as aforesaid, the independent operators of the Wyoming region set on foot another movement for an independent railroad from that region to tide water, and the Pennsylvania Coal Company, the largest and most powerful of the independent operators, producing annually 2,000,000 tons of anthracite, more or less, and owning a rich and extensive area of undeveloped anthracite deposits, became the leader of this movement. The Pennsylvania Coal Company, or some of its stockholders, owned or controlled the Erie and Wyoming Valley Railroad Company, a Pennsylvania corporation, which operated a short local line of railroad from a point near Scranton, in the Wyoming region, to Hawley, Pennsylvania, and, on condition that a sufficient number of independent operators should assure their ton-

nage to the new road, if completed, it agreed to undertake the
39 construction of a line of railroad from Hawley to tide water, making a connected line from the coal regions to tide water. The tonnage of a sufficient number of independent operators was assured, by contract, to the proposed new road. The said Pennsylvania Coal Company then organized, or caused to be organized, under the laws of the State of New York, the Delaware Valley and Kingston Railroad Company, which immediately applied to the Board of Railroad Commissioners of that State for the right to construct the proposed railroad along the bed of the abandoned Delaware and Hudson Canal, extending from Lackawaxen, Pennsylvania, just the other side of the New York State line, to tide water; that is, to Rondout, on the Hudson River, the canal having been purchased by or on behalf of the Pennsylvania Coal Company for the purpose of putting it to this use. The application for the right of way was opposed, both before the Board of Railroad Commissioners of the State of New York and in the courts of that State, by the defendant, the Erie Railroad Company (which, as aforesaid, controls the defendant, the New York, Susquehanna and Western Railroad Company), and the New York, Ontario and Western Railway Company; but both the Board of Railroad Commissioners (Report State Board Railroad Commissioners, Vol. I, p. 789, 1900) and the courts (54 App. Div., 615) decided in favor of the application and the right of way was granted. Whereupon other means were resorted to for the pur-
pose of defeating the projected independent road—this is to
40 say, the defendant, the Erie Railroad Company, and other persons unknown to your petitioner, in combination with and through the agency of the banking house of J. P. Morgan and Company of the city of New York, in furtherance of the unlawful combination hereinbefore charged and set forth, and in violation of the aforesaid act of July 2, 1890, acquired, at an exorbitant price, to wit, $552, a share, more or less (the par value of a share being $100), nearly all of the capital stock of the Pennsylvania Coal Company, and also acquired all of the capital stock of the aforesaid Erie and Wyoming Valley Railroad Company and Delaware Valley and Kingston Railroad Company, which the Pennsylvania Coal Company controlled, thereby defeating the construction of the proposed independent railroad to tide water and again preventing the introduction of competition in the transportation of anthracite coal from the mines to other States and in its sale throughout the several States. For the purpose of meeting the outlay which the acquisition of the capital stock of these three companies necessitated, the defendant, the Erie Railroad Company, issued 50,000 additional shares of its first-preferred stock of the par value of $5,000,000 and its bonds in the aggregate principal sum of $32,000,000.

To the end, therefore,

That each of the defendants, the Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad
Company, the Delaware, Lackawanna and Western Railroad
41 Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and

Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, may fully and accurately discover and set forth in its answer, whether separate or joint, the name and residence of each and every individual, firm, or corporation with whom or with which it, or any person or persons acting in its behalf, or any corporation a majority of whose capital stock it owns in law or in equity, has or had any contract or contracts, in force at the time of the filing of this petition, for the purchase or transportation of any or all sizes of anthracite coal for an agreed percentage of the general average free-on-board prices received at tide water for corresponding sizes, being the contracts more particularly described in paragraph VII*a* hereof;

And that pursuant to the provisions of section 4 of the aforesaid act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," it may by this honorable court be adjudged and decreed—

First. (*a*) That the defendants named herein have, as charged in paragraph VII hereof, formed and entered into a combination or conspiracy to restrain trade and commerce in anthracite coal
42 among the several States by shutting out competition in the transportation and sale of that commodity and regulating the price thereof among the several States, and have monopolized and attempted to monopolize, and combined and conspired with each other to monopolize, a part of such trade and commerce in violation of the provisions of sections 1 and 2, respectively, of the aforesaid act of July 2, 1890; and (*b*) that the said defendants, their agents and servants, and all persons acting or assuming to act under their authority, be forever enjoined from continuing or in any manner acting under or in pursuance of the aforesaid combination or conspiracy in restraint of trade and commerce among the several States, and from continuing to monopolize or attempting to monopolize any part of such trade and commerce, in the manner aforementioned;

Second. (*a*) That the contracts described in paragraph VII*a* hereof, between the defendant carriers or their subsidiary companies and agents, the defendant coal companies, severally, and various independent or individual anthracite operators, are contracts in restraint of trade and commerce among the several States, and constitute a part of the aforesaid combination or conspiracy, charged in paragraph VII hereof, to restrain such trade and commerce and monopolize a part thereof, and are therefore illegal and void under both sections 1 and 2 of the aforesaid act of July 2, 1890; and (*b*) that the said contracts be delivered up to be canceled and that the defendants, their agents and servants, and all persons acting
43 or assuming to act under their authority, be forever enjoined from further executing or carrying into effect any of the provisions of the said contracts, and from making or entering into any contracts of like character or effect hereafter;

Third. (*a*) That the shares of the capital stock of the New York,

Susquehanna and Western Railroad Company now held and owned by the Erie Railroad Company, being a majority of the whole, were acquired and are now held by it in pursuance of the aforesaid combination or conspiracy charged in paragraph VII hereof and by means and virtue of a further combination or conspiracy in restraint of interstate commerce by and between the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company and their respective stockholders, in violation of section 1 of the aforesaid act of July 2, 1890; (*b*) that the said Erie Railroad Company, by thus acquiring a majority of the shares of the capital stock of its competitor, the said New York, Susquehanna and Western Railroad Company, monopolized and now monopolizes a part of trade and commerce among the several States, in violation of section 2 of the aforesaid act of July 2, 1890; and (*c*) that the said Erie Railroad Company, its officers, agents, servants, and employees, be forever enjoined from voting the aforesaid stock of the New York, Susquehanna and Western Railroad Company which it now holds or any which it may acquire, and from voting at any meeting of the stockholders of the said New York, Susquehanna and Western
44 Railroad Company, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts and doings of the said New York, Susquehanna and Western Railroad Company by virtue of its aforesaid holdings of stock therein; and that the New York, Susquehanna and Western Railroad Company, its officers, directors, servants, and agents, be forever enjoined from permitting the stock aforesaid to be voted by the Erie Railroad Company, or in its behalf by its attorneys or agents, at any corporate election for directors or officers of the said New York, Susquehanna and Western Railroad Company, or at any other meeting of the stockholders thereof in their corporate capacity, and that the last-named company, its officers, directors, servants, and agents, be also forever enjoined from paying any dividends to said Erie Railroad Company, its officers, directors, servants, or agents, on account of the stock aforesaid, and from permitting or suffering the said Erie Railroad Company, or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of the said New York, Susquehanna and Western Railroad Company;

Fourth. (*a*) That the shares of the capital stock of the Central Railroad Company of New Jersey now held and owned by the Reading Company, being a majority of the whole, were acquired and are now held by it in pursuance of the aforesaid combination or conspiracy charged in paragraph VII here of and by means and
45 virtue of a further combination or conspiracy in restraint of interstate commerce by and between the Reading Company, the Philadelphia and Reading Railway Company, and the Central Railroad Company of New Jersey, and their respective stockholders, in violation of section 1 of the aforesaid act of July 2, 1890; (*b*) that the said Reading Company, which owns the entire capital stock of the said Philadelphia and Reading Railway Company, by thus acquiring a majority of the shares of the capital stock of a rival and

competitor of the latter, namely, the said Central Railroad Company of New Jersey, monopolized and now monopolizes a part of trade and commerce among the several States, in violation of section 2 of the aforesaid act of July 2, 1890; and (*c*) that the said Reading Company, its officers, agents, servants, and employees, be forever enjoined from voting the aforesaid stock of the Central Railroad Company of New Jersey which it now holds or any which it may acquire, and from voting at any meeting of the stockholders of the said Central Railroad Company of New Jersey, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts and doings of the said Central Railroad Company of New Jersey by virtue of its aforesaid holdings of stock therein; and that the Central Railroad Company of New Jersey, its officers, directors, servants, and agents, be forever enjoined from permitting the stock aforesaid to be voted by the Reading Com-
46 pany, or in its behalf, by its attorneys or agents, at any corporate election for directors or officers of the said Central Railroad Company of New Jersey, or at any other meeting of the stockholders thereof in their corporate capacity, and that the last-named company, its officers, directors, servants, and agents, be also forever enjoined from paying any dividends to the said Reading Company, its officers, directors, servants, or agents, on account of the stock aforesaid, and from permitting or suffering the said Reading Company, or any of its officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of the said Central Railroad Company of New Jersey;

Fifth. (*a*) That the aforesaid collieries in the Wyoming region formerly owned by Simpson and Watkins, independent operators, acquired by the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, through the instrumentality of the Temple Iron Company, whose stock they severally owned or controlled in agreed proportions, were so acquired in pursuance generally of the aforesaid combination or conspiracy charged in paragraph VII hereof and specifically in pursuance of a combination or conspiracy between the defendants last named to defeat the construction of a com-
47 peting railroad from the anthracite fields to tide water, in violation of the aforesaid act of July 2, 1890; (*b*) that in so acquiring, through the purchase of agreed percentages of the capital stock of the Temple Iron Company ownership in common of the aforesaid collieries formerly owned by Simpson and Watkins, as set forth in paragraph VII*d* hereof, the said Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company pooled and divided among themselves the tonnage from those collieries, thereby shutting out competition in its transportation, in violation of the aforesaid act of July 2, 1890; and (*c*) that the said Reading Company, Lehigh Valley Railroad Company, Central Rail-

road Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company, their officers, agents, servants, and employees, be forever enjoined from voting the aforesaid stock of the Temple Iron Company which they now severally hold or any which they may acquire, and from voting at any meeting of the stockholders of the said Temple Iron Company, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts and doings of the said Temple Iron Company by virtue of their aforesaid holdings of stock

48 therein; and that the Temple Iron Company, its officers, directors, servants, and agents, be forever enjoined from permitting the Reading Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company, or any of them, their or any of their attorneys or agents, from voting at any corporate election for directors or officers of the said Temple Iron Company, or at any other meeting of the stockholders thereof in their corporate capacity, and that the last-named company, its officers, directors, servants, and agents, be also forever enjoined from paying any dividends to the said Reading Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company, their or any of their officers, directors, servants, or agents, on account of the stock aforesaid, and from permitting or suffering the said Reading Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company, their or any of their officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of the said Temple Iron Company; and

49 Sixth. That your petitioner have such other and further relief as the nature of the case may require and the court may deem proper;

May it please this honorable court to grant unto your petitioner writs of subpœna, directed to the above-named defendants, the Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Phiadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, and to the other persons, natural or corporate, herein charged to have been parties to the aforesaid violations of law, as their names may become known to your petitioner and the court

advised thereof, commanding them, and each of them, under a penalty and at a time and place to be therein stated, to appear and answer (but not under oath, answer under oath being expressly waived) all and singular the matters and things hereinbefore stated and charged, and abide by and perform such orders and decrees as the court may make in the premises; and, pending the final
50 hearing of this case, may it please the court to issue a temporary restraining order enjoining the defendants, their directors, officers, agents, and servants, as hereinbefore prayed.

J. WHITAKER THOMPSON,
United States Attorney for the Eastern District of Pennsylvania.
CHARLES J. BONAPARTE,
Attorney-General of the United States.
ALEXANDER SIMPSON, JR.,
G. CARROLL TODD,
Special Assistants to the Attorney-General of the United States.
M. D. PURDY,
Assistant to the Attorney-General.

UNITED STATES OF AMERICA,
Eastern Judicial District of Pennsylvania, ss:

J. Whitaker Thompson, being first duly sworn, says that he is the attorney of the United States for the Eastern Judicial District of Pennsylvania, and that he has read the foregoing petition by him subscribed, and that the statements made therein are true, except as to such matters as are stated on information and belief, and as to those, he believes them to be true. He further says that he
51 was authorized to sign said petition on behalf of the United States by the Attorney-General of the United States.

J. WHITAKER THOMPSON,
United States Attorney for the Eastern District of Pennsylvania.

Subscribed in my presence and sworn to before me this 12th day of June, 1907.

[SEAL OF COURT.] GEORGE BRODBECK, JR.,
Deputy Clerk Circuit Court United States, E. D. of Pa.

52 EXHIBIT A.

This Agreement, made and executed in the city of Philadelphia, Penna., this — day of ——, nineteen hundred —— between —— —— (hereinafter called the Seller), party of the first part, and —— —— (hereinafter called the Buyer), party of the second part, Witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from

any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:—[Here follows description of mines.]

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipments which will enable the Seller to work its colleries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the
53 First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until

the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b.
54 price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the — region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell or dispose of, at retail, on its own account, coal
55 for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into

railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

Broken through a mesh 4″ square and over a mesh 2¾″ square.

Egg through a mesh 2¾″ square and over a mesh 2″ square.

Stove through a mesh 2″ square and over a mesh 1⅜″ square.

Chestnut through a mesh 1⅜″ square and over a mesh ¾″ square

Pea through a mesh ¾″ square and over a mesh ½″ square.

Buckwheat No. 1 through a mesh ½″ square and over a mesh ¼″ square.

Buckwheat No. 2 or Rice through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor
56 respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1. more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock, and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone [containing a

proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.], viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests
57 on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such

points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as
58 the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities, or other property of the Railway Company, or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for nonfulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz., —— ——; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed, in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial
59 & 60 loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller can not operate its mines without loss on the basis of this contract, and if the Buyer and Seller can not agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and

cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Signed, Sealed and Delivered in the resence of

Attest: By ——— ———, *President.*

——— ———, *Secretary.*

Attest: By ——— ———, *President.*

——— ———, *Secretary.*

61 [*Petition for Subpœnas for Non Resident Defendants, Filed June 12, 1907.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
THE READING COMPANY and Others, Defendants.

Your petitioner, the United States of America, prays that the court may order, as provided in Section 5 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, that the following named corporations not inhabitants of this district be summoned to appear as defendants in the above entitled cause, it having been fully shown in the bill of complaint filed herein this day that the ends of justice require that they should be brought before the court, to-wit:

(1) The Delaware, Lackawanna & Western Railroad Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the middle judicial district thereof at Scranton.

(2) The Central Railroad Company of New Jersey, a corporation created and existing under the laws of the State of New Jersey and having its principal office in that State at Jersey City.

(3) The Erie Railroad Company, a corporation created an- existing under the laws of the State of New York and having its
62 principal office in that state in the Southern Judicial District thereof at the city of New York.

(4) The New York, Susquehanna & Western Railroad Company, a corporation created and existing under the laws of the State of New Jersey and having its principal office in that State at Jersey City.

(5) The Pennsylvania Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Dunmore.

(6) The Hillside Coal and Iron Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Scranton.

(7) The New York, Susquehanna & Western Coal Company, a corporation created and existing under the laws of the State of Pennsylvania and having its principal office in that State in the Middle Judicial District thereof at Wilkes-Barre.

J. WHITAKER THOMPSON,
United States Attorney E. Dist. of Penna.

63 [*Order to Serve Non Residents. Filed June* 12, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

UNITED STATES OF AMERICA
vs.
THE READING COMPANY et al.

And now, June 12th A. D. 1907, upon consideration of the above petition and it appearing to the Court that the ends of justice require that the foregoing non-resident defendants should be brought before the Court, it is ordered that they be summoned to appear with the other defendants before the Court and that a subpœna be hereby granted directed to them; a copy of the petition and of this order to be served with the subpœna and the original petition.

By the Court:

JAMES B. HOLLAND, *J.*

64 *Petition for Leave to Amend Bill.*

Filed Oct. 7, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of April Sessions, 1907, Sitting in Equity.

No. 27.

THE UNITED STATES OF AMERICA
vs.
THE READING COMPANY et al.

To the Honorable the Judges of said Court:

Your petitioner, The United States of America, respectfully represents:

That in certain of the Answers filed to the original petition in the above case, it is asserted that certain persons, firms and corporations are interested in the subject matter of the litigation and should be made parties to the said suit.

That no replication has yet been filed in said cause.

That your petitioner is desirous of amending its original petition so as to bring in certain of the persons, firms and corporations named in said Answers, as additional defendants in the suit, and to make also the necessary averments in regard to them.

Wherefore it prays leave of your Honorable Court that it may be allowed to amend in respect to the matters above referred to as it shall be advised.

ALEX. SIMPSON, JR.,
Special Ass't to the Att'y Gen'l.

65 *Order of Court Granting Leave to Amend, &c.*

Filed Oct. 7, 1907.

Order.

Before McPherson, J.

And now, October 7th, 1907, upon consideration of the foregoing Petition, it is ordered and decreed that the plaintiff have leave to amend its original petition by adding thereto such additional parties as it shall be advised are proper parties to the litigation, and by making such averments as it shall deem necessary to connect them properly with the subject matter of the litigation, with leave to the defendants to vacate this order within ten days if they shall be so advised.

By the Court.
Attest: GEORGE BRODBECK, JR.,
Deputy Clerk.

66 [*Amendment to Original Petition. Filed October* 17, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Amendment to Original Petition.

Your petitioner, the United States of America, by leave of the court first had and obtained, hereby amends its original petition in the above entitled cause by adding as defendants therein The Pennsylvania Company for Insurances on Lives and Granting Annuities, a corporation of Pennsylvania, with a place of business at Philadelphia, Pennsylvania; The Mercantile Trust Company, a corporation of New York, with a place of business at New York City, New York; The Delaware and Hudson Company, a corporation of New York, with a place of business at New York City, New York; the Elk Hill Coal and Iron Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania, and also at New York City, New York, where its principal offices are located; the St. Clair Coal Company, a corporation of Pennsylvania, with a place of business at St. Clair, Pennsylvania; the Enterprise Coal Com-
67 pany, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Pine Hill Coal Company, a corporation of Pennsylvania, with a place of business at Pottsville, Pennsylvania; the Buck Run Coal Company, a corporation of Pennsylvania, with a place of business at Rohoesville, Pennsylvania, or Minersville, Pennsylvania; the Llewellyn Mining Company, a corporation of Pennsylvania, with a place of business at Shamokin, Pennsylvania; the Clear Spring Coal Company, a corporation of Pennsylvania, with a place of business at Pittston, Pennsylvania; the Pancoast Coal Company, a corporation of Pennsylvania, with a place of business at Pittston, Pennsylvania; the Price-Pancoast Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Mount Lookout Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Peoples' Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the George F. Lee Coal Company, a corporation of Pennsylvania, with a place of business at Wilkes-Barre, Pennsylvania; the North End Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Melville Coal Company, a corporation of Pennsylvania, with a place of business at Scranton Pennsylvania; the Parrish Coal Company, a corporation of Pennsylvania, with a place of business at Plymouth,

Pennsylvania; the Red Ash Coal Company, a corporation of Pennsylvania, with a place of business at Wilkes-Barre, Pennsylvania; the Raub Coal Company, a corporation of Pennsylvania, with a place of business at Luzerne Borough, Pennsylvania; the Mid Valley Coal Company, a corporation of Pennsylvania, with a place of business at Mauch Chunk, Pennsylvania; the Austin Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Clarence Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Nay Aug Coal Company, a corporation of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Green Ridge Coal Company, a corporation of Pennsylvania, with a place of
68 business at Scranton, Pennsylvania; the Excelsior Coal Company, a corporation of Pennsylvania, with a place of business at Carbon, Pennsylvania; the Lackawanna Coal Company, Limited, a partnership association formed under the laws of Pennsylvania, with a place of business at Scranton, Pennsylvania; the Dolph Coal Company, Limited, a partnership association formed under the laws of Pennsylvania, with a place of business at Scranton, Pennsylvania; Mary F. W. Howe, Frank Pardee, and Mrs. Sarah Drexel Van Rensselaer, executrix under the will of John R. Fell, deceased, co-partners, trading as A. Pardee & Co., with a place of business at Hazelton, Pennsylvania; Lafayette Lentz, William O. Lentz, and Lewis A. Riley, co-partners, trading as Lentz & Co., with a place of business at Park Place, Pennsylvania; William Law and John M. Robertson, co-partners, trading as Robertson & Law, with a place of business at Moosic, Pennsylvania; Richard White, W. R. McTurk, and Robert White, co-partners, trading as E. White Company, with a place of business at Pottsville, Pennsylvania; Joseph J. Jermyn, a resident of Scranton, Pennsylvania, and George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, all residents of Scranton, Pennsylvania, as executors of John Jermyn, deceased; and Michael F. Dolphin, a resident of Scranton, Pennsylvania; the said Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under an indenture from the defendant, the Reading Company, being the holder of the legal title to certain shares of the capital stock of the Central Railroad Company of New Jersey which in the aforesaid original petition the court is prayed to enjoin the said Reading Company—the equitable and beneficial owner thereof—from voting or receiving dividends upon; the said Mercantile Trust Company, as trustee under a collateral trust mortgage, being the holder of the legal title to certain shares of the capital stock of the New York, Susquehanna and Western Railroad Company which in the original petition the court is prayed to enjoin the defendant the Erie Railroad Company—the equitable and beneficial owner thereof—from voting or receiving dividends upon;
69 and the said other persons, associations, and corporations being coal operators who are the contracting parties with the defendant carriers or the defendant coal companies, as the case may be, in the contracts described in paragraph VII(*a*) of the original petition and prayed to be adjudged unlawful as in violation of the

Act of Congress approved July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Wherefore your petitioner prays as it has before prayed in its original petition, and further, that it may please this Honorable Court to grant unto your petitioner writs of subpœna directed to the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, the Mercantile Trust Company, the Delaware and Hudson Company, the Elk Hill Coal and Iron Company, the St. Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the Peoples' Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parrish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, Mrs Sarah Drexel Van Rensselaer as executrix under the will of john R. Fell, deceased, Lafayette Lentz, William O. Lentz, Lewis A. Riley, William Law, John M. Robertson, Richard White, W. R. McTurk, Robert White, Joseph J. Jermyn, in his own right, George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, as executors of John Jermyn, deceased, and Michael F. Dolphin, commanding them and each of them, under a penalty and at a time and place to be therein stated, to appear and answer (but not under oath, answer under oath being expressly waived) all the matters and things in the
70 original petition and in this amendment stated and charged. and abide by and perform such orders and decrees as the court may make in the premises; and, pending the final hearing of this case, may it please the court to issue a temporary restraining order enjoining the defendants and each of them, their and each of their directors, officers, agents, employees, and servants, as already prayed.

J. WHITAKER THOMPSON,
United States Attorney for the Eastern District of Pennsylvania.
ALEX. SIMPSON, JR.,
Special Assistant to the Attorney General.
G. CARROLL TODD,
Special Assistant to the Attorney General.

71 The subpœnaes to defendants and appearances of counsel will be found grouped together, *post.* See index.

HENRY B. ROBB, *Clerk.*

72 *Stipulation of Counsel. Filed November 25, 1907.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Now, to wit, the 19th day of November, 1907, it is stipulated and agreed by and between the United States of America, Complainant, and Joseph J. Jermyn, George Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, Executors of John Jermyn, deceased, defendants named in the amendment to the original petition, that, with the consent of court, the time for filing the answer of the said defendants may be extended until the first Monday of January, 1908.

ALEX. SIMPSON, JR.,
Solicitor for Complainant.
WELLES & TORREY,
Solicitors for Joseph J. Jermyn et al., Defendants.

Endorsed: Before Holland, J. And now, to wit, Nov. 25th, 1907, upon filing the within stipulation of counsel the time for filing answer by the within named defendants J. J. Jermyn et al., is extended until the first Monday of January, 1908. By the Court. Attest George Brodbeck, Deputy Clerk.

73 *Stipulation of Counsel.*

Filed November 25, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Now, to wit, the 19th day of November, 1907, it is stipulated and agreed by and between the United States of America, Complainant, and the Delaware and Hudson Company, one of the defendants named in the amendment to the original petition, that, with the consent of court, the time for filing the answer of the said defendants may be extended until the first Monday of January, 1908.

ALEX. SIMPSON, JR.,
Solicitor for Complainant.
JAMES H. TORREY,
Solicitor for Delaware and Hudson Company, Defendant.

Endorsed: Before Holland, J. And now, to wit, Nov. 25th 1907 upon filing the within stipulation of counsel the time for filing answer by the within named defendant the Delaware & Hudson Company is extended until the first Monday of January, 1908. By the Court. Attest: George Brodbeck, Deputy Clerk.

74 [*Answer Reading Company. Filed August* 31, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania. April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff.
vs.
THE READING COMPANY and Others, Defendants.

The Separate Answer of Reading Company, One of the Defendants Herein.

I.

This defendant denies that it holds the entire capital stock of the Philadelphia and Reading Railway Company and of The Philadelphia and Reading Coal and Iron Company, and a majority in interest of the capital stock of the Central Railroad Company of New Jersey, as charged in Paragraph I of the Plaintiff's petition,
75 but it admits that it is the owner of an equitable or beneficial interest—subject to certain liens or pledges not material, as this defendant is advised by Counsel, to be particularly set forth herein,—in the major portion of the share capital of each of the said several corporations.

It admits that the defendant Philadelphia and Reading Railway Company is a common carrier engaged in Interstate Commerce and particularly in the transportation of anthracite coal from the mines located on its own lines of railroad, but not otherwise.

It admits that the defendant, The Philadelphia and Reading Coal and Iron Company, owns and operates anthracite coal mines in the State of Pennsylvania, and buys, sells and otherwise deals in anthracite coal.

It admits that the defendant, the Central Railroad Company of New Jersey, is a common carrier engaged in Interstate Commerce, and particularly in the transportation of anthracite coal from the mines located on its lines of railroad, and branches but not otherwise.

It admits that the defendant, the Lehigh and Wilkes-Barre Coal Company owns and operates anthracite coal mines in the State of Pennsylvania, and buys, sells and otherwise deals in anthracite coal.

But this defendant is an utter stranger to all and singular the several matters and things set forth and alleged in Paragraph I of the petition respecting the several other defendants herein.

II.

This defendant, for answer to the matters and things alleged and set forth in Paragraph II of the Plaintiff's petition says that it hath no particular or specific knowledge of or concerning the same or any of them, but it is informed and believes that the answers filed herein in respect thereof by the Philadelphia and Reading Railway Company, and the Central Railroad Company of New Jersey, by The Philadelphia and Reading Coal and Iron Company, and by the Lehigh and Wilkes-Barre Coal Company are true in all things,
76 and having herein hereafter fully and sufficiently denied the said unlawful contracts and combinations set forth in the said Petition, this defendant is advised by counsel that no further answer in respect of the allegations of the said paragraph is necessary or required or material to be made.

III.

This defendant, for answer to the matters and things alleged and set forth in Paragraph III of the Plaintiff's petition says, that it denies that it hath any knowledge of or concerning the rights, powers or privileges of any of the said defendants, save in respect of its own and those of the Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company, and in so far as the said several allegations may be deemed to be material in respect of this defendant, it asks that they shall be proved.

It denies that the defendant carriers, the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey, or either of them, or that the defendants, The Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, or either or any of them, are one and the same thing, or in any otherwise identical, in any legal, practical or other sense, with this defendant, either for or on account of this defendant's equitable or beneficial interest in the share capital of the said several last named corporations, or in any otherwise howsoever.

It denies that it is now, or has at any time, either directly or indirectly, engaged in operating coal mines, in buying, selling or otherwise dealing in coal, or in the transportation thereof, either through the means and instrumentality of any of the defendant coal companies, or the defendant carriers, or any of them, or in any otherwise howsoever, saving and excepting, however, its right, in
77 virtue of its equitable interest in the share capital of some of the said defendants, to direct the vote upon the shares in which it has an interest at the meetings of the shareholders of the said companies.

IV.

This defendant, for answer to the several matters and things alleged and set forth in Paragraph IV of the Plaintiff's petition, denies that it hath any knowledge whatsoever of and concerning the

said several allegations, save and except that the said The Philadelphia and Reading Coal and Iron Company and the said Lehigh and Wilkes-Barre Coal Company do own or lease and control, by virtue of the operation of such ownership or leases, an uncertain and indefinite proportion of the unmined area containing or supposed to contain anthracite coal deposits mentioned in Plaintiff's petition. This defendant has no knowledge of the number or character of the said so-called individual operations, whether of individuals, firms or corporations, nor of the business conducted by them.

It denies, however, that at any time, or under any circumstances whatsoever, it ever entered into, became party to, or participated in any wise whatsoever, in any of the supposed and alleged unlawful contracts, combinations or conspiracies alleged and set forth in the Plaintiff's petition, either in its own behalf or in behalf of any or either of the said other defendants.

V.

This defendant, answering unto the several matters and things alleged and set forth in Paragraph V of the Plaintiff's petition says that it hath no specific or particular knowledge of or concerning the said several matters or any of them, and, therefore, adopts in respect of every and each of them, the several answers exhibited
78 herein in respect thereof of the defendants The Philadelphia and Reading Coal and Iron Company, the Lehigh and Wilkes-Barre Coal Company, the Philadelphia and Reading Railway Company, and the Central Railroad Company of New Jersey

VI.

This defendant answering the vague, indefinite, impertinent, uncertain and scandalous charges, allegations and statements set forth and alleged in Paragraph VII of Plaintiff's petition, waiving exception thereto, for their obvious scandal and impertinence, denies that it ever, at any time, from any motive or consideration whatsoever, either such as are alleged and recited in the said paragraph, or any other, whether in concert with the said other defendants, or any of them, or with any other person, firm or corporation whatsoever, or in any otherwise howsoever, entered into any agreement, scheme, combination or conspiracy, for any purpose or with any result whatsoever, whether to acquire the power to control, regulate, restrain or monopolize the production or sale of anthracite coal or its transportation or otherwise.

This defendant further answering the matters and things alleged and set forth in the said paragraph VII avers it was not actively engaged in any business whatsoever during the years 1890, 1891, 1892, 1893, 1894, or 1895, mentioned in the said paragraph, nor during the year 1896 until the first day of December thereof, and neither during the said period nor before had any interest in the shares or bonds or other property or assets of any of the said other defendants, and it denies that it ever had, prior to the said December 1, 1896, any knowledge, interest in, or connection with any of the matters and things alleged and set forth in the Plaintiff's petition.

It denies that as alleged in item (*a*) of said paragraph, whether in order to prevent the output of the so-called independent
79 mines from being sold throughout the United States in competition with the mines of the defendant companies, or any of them, it ever entered into or now maintains, or in anywise participates in maintaining, an agreement, combination or conspiracy, with the said defendants, or any of them, or with any person or persons whomsoever to use the power of the carrier companies, or any of them, to obtain control of the disposition of the aforesaid output of the so-called independent mines in the markets of the several States, or particularly in the so-called great distributing market at New York Harbor.

In respect of the matters and things alleged and set forth in the said item (*a*) of the said paragraph of and concerning the said purchases of coal made by the said other defendants or some of them, their several contracts therefor, or the purposes thereof, this defendant hath no knowledge whatsoever, save in respect of the purchases and contracts of the defendants The Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, and in respect of the details thereof, and of the said dealings and transactions severally, this defendant avers it knows little, but it has been informed of the contents of the answers proposed to be exhibited herein by the said last named defendants, respectively, to the allegations contained in the said item (*a*) of the said paragraph, and it has no doubt but that the statements therein contained are correct and true. It has also been informed of the contents of the answers proposed to be so exhibited herein by the Philadelphia and Reading Railway Company and by the Central Railroad Company of New Jersey, respectively, in respect of the allegations contained in the said item (*a*) of the said paragraph, of and concerning the dealings and transactions of the coal producing companies, persons and firms whose operations are located on their respective lines of railroad, and that it is informed and believes that the statements and averments thereof, respectively, are true in all things.

And this defendant, answering unto the several matters and things alleged and set forth in item (*b*) of the said Paragraph VII of
80 Plaintiff's petition, says it is an utter stranger to the said alleged dealings and transactions between the said Erie Railroad Company and the New York, Suequehanna and Western Railroad Company, or the shareholders thereof, and denies that it has or ever had any interest in or connection with the same or any of them.

And this defendant, answering unto the several matters and things alleged and set forth in item (*c*) of the Plaintiff's petition says:—

This defendant denies that the Central Railroad Company of New Jersey operates a line of railroad between the anthracite regions in Pennsylvania and tidewater points in the vicinity of New York Harbor that is substantially parallel to, and in the absence of a restraining agreement or combination would be a competitor for traffic with, the lines of railroad operated between the same points

by the said defendant the Philadelphia and Reading Railway Company; it avers that the lines of the defendant, the Central Railroad Company of New Jersey, in the State of Pennsylvania, reach and traverse a wholly distinct and different part and portion of the so-called anthracite region, widely separated from those parts reached and traversed by the lines of the said Philadelphia and Reading Railway Company; that no part of the territory or traffic of the said anthracite region tributary to the said lines of the Central Railroad Company of New Jersey, are, or can become tributary to the lines of the Philadelphia and Reading Railway Company; that the said Philadelphia and Reading Railway Company is not, was not then and there, or before or since, and could not become, a competing line, or a competitor for traffic with the defendant the Central Railroad Company of New Jersey in respect of the anthracite coal produced or to be produced on the lines of the said Central Railroad Company of New Jersey; that the Central Railroad Company of New Jersey is not, was not then and there, or before or since, and could not become, a competing line or a competitor for traffic with the defendant the Philadelphia and Reading Railway Company in respect of the anthracite coal produced or to be produced on
81 the lines of the said Philadelphia and Reading Railway Company; and this defendant denies that the said lines of railroad are, or ever were, parallel or competitive with each other for any traffic of any kind or nature whatsoever; on the contrary, this defendant avers that the system of railroads of the Central Railroad Company of New Jersey and those of the Philadelphia and Reading Railway Company and its predecessor are, and always have been, since their construction, connecting lines of railroad, supplementing each other in the formation of through routes for the transportation of the commerce of the country; that the continued maintenance of the said through routes for transportation, instead of tending to hinder or restrain the trade or commerce among the several states, or with foreign nations, contrary to the provisions of the said Act of July 2, 1890, is of vast importance in aiding and facilitating the same, in precise conformity to the spirit and purpose of the Act to Regulate Commerce and its several supplements in that behalf, each forming the essential and absolutely necessary outlet for the interstate and foreign traffic carried by the other in cases where the destination of the traffic is beyond the line on which its movement originates; that is to say—the lines of the said systems connect at Bound Brook, in the State of New Jersey, and form through routes for the transportation of persons and property between all points to the eastward of the said Bound Brook, including New York Harbor and points east thereof, to all points reached by way of the lines of the said Philadelphia and Reading Railway Company and their connections, including those of the Baltimore and Ohio Railroad Company to the South and West; they are also connected at Allentown, in the State of Pennsylvania, and form through routes of transportation between points to the eastward reached by the lines of the Central Railroad Company of New Jersey, and points to the westward reached by the lines of the Philadelphia and Reading

Railway Company and their connections, including the lines of the Pennsylvania Railroad Company from Harrisburg, Pennsylvania, to all points in the West, Northwest and Southwest, and including the lines of the Baltimore and Ohio Railroad Company
82 to all points West, South and Southwest; they also connect at Tamanend and Haucks Switch, in the State of Pennsylvania, and form through routes of transportation between all points to the eastward aforesaid, and by way of the lines of the New York Central System with all points to the West and Northwest; and they also connect at Bethlehem Junction, in the State of Pennsylvania, and form through routes of transportation between all points south of Bethlehem Junction, including the City of Philadelphia, and points south thereof, and all points reached by way of the lines of the Central Railroad of New Jersey and their connections to the Northward, and Westward; and that the acquisition by this defendant of the equitable or beneficial interest in certain of the said shares of the capital stock of the Central Railroad Company of New Jersey as hereinafter specifically mentioned and described was and is in strict harmony with the public policy of the United States as defined in the Act to Regulate Commerce and its various supplements, and by the report of the Interstate Commerce Commission (12 Interstate Commerce Reports) wherein it is stated:—

"Railroads should not be permitted to invest generally in the stock, bonds and securities of other railway and steamship companies, except connecting lines for the purpose of forming through routes of transportation including branches and feeders. It is in the interest of the public to facilitate the consolidation of connecting lines."

And this defendant further answering unto the said several matters and things alleged and set forth in the said item (*c*) of the said Paragraph VII of the Plaintiff's petition, but denying all manner of unlawful confederation, combination and conspiracy in that behalf, alleges and avers:

That, being then and there the owner of the said equitable or beneficial interest in the major portion of the shares of the capital stock of the said Philadelphia and Reading Railway Com-
83 pany, this defendant, on or about January 7, 1901, by and through its properly authorized representatives, agreed to purchase from the owners and holders thereof one hundred and forty-five thousand (145,000) shares of the capital stock of the said Central Railroad Company of New Jersey, which were afterwards transferred to and vested in this defendant, in consideration, among other things, of the execution by this defendant, of a certain purchase money collateral Indenture to secure an issue of bonds for the aggregate principal sum of $23,000,000; whereupon, on the first day of April, 1901, this defendant made and executed the certain Indenture now here shown to the Court, which this defendant craves leave to produce and introduce in evidence at the hearing, wherein and whereby, in order to secure the payment of the principal and interest of all such bonds as should be at any time issued or outstanding thereunder, this defendant assigned, transferred and pledged unto The Pennsylvania Company for Insurances on Lives

and Granting Annuities, a corporation of Pennsylvania, its successors and assigns forever, among other things, the following shares of the capital stock then belonging to this defendant, for which certificates were to be transferred and delivered, either by the Reading Company or by the record holders of such certificates or shares, to the Trustee as therein provided, namely:—

One hundred and forty-five thousand (145,000) shares of the Capital Stock of the Central Railroad Company of New Jersey, of the par value of $100 each, being a majority of the whole capital stock of said Company; but, in trust, nevertheless, for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by the said Indenture.

That at and upon the execution of the said Indenture a certificate or certificates of the Central Railroad Company of New Jersey was issued and registered upon the books thereof in the name of the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as Trustee, which was or were then and there de-
84 livered unto the said Trustee, which still remains the owner and holder thereof, under the trusts mentioned and set forth in the said Indenture, and that there were then issued and now remain outstanding and unpaid in the hands of the public Twenty-three million dollars ($23,000,000) in amount of the bonds of this defendant, the payment of the principal and interest whereof by this defendant is secured by the said assignment, transfer, pledge and deposit of the said certificate or certificates representing the said 145,000 shares of the Capital Stock of the said Central Railroad Company of New Jersey.

This defendant, answering unto the several matters and things set forth and alleged in item (*d*) of the said Paragraph VII of the Plaintiff's petition, says that it is an utter stranger to the said alleged transactions of the said so-called independent operators in the said Wyoming and Lehigh regions, or their motives therefor, of their promoting the construction of a new line of railroad, or of the said supposed connection of the said Simpson and Watkins therewith. It has no knowledge of the said supposed effect of the construction and operation of the said supposed railroad, and in case the said matters are deemed to be material it demands strict proof thereof. It denies that, intending to shut out the said supposititious competition in the transportation of anthracite coal from the mines to other states, and the sale thereof throughout the several states, whether in violation of the aforesaid Act of July 2, 1890, or otherwise, this defendant entered into an agreement, combination and conspiracy to prevent the said supposititious independent and competing railroad by diverting and drawing away from it the support and influence of its principal promoters and those who would have furnished it with a large part of its tonnage, or with any other purpose or from any other motive whatsoever. It denies that it purchased or participated in the purchase of the said $250,000 of original capital stock of the said Temple Iron Company as alleged; and this defendant fur-

ther denies each and every other allegation contained in the
85 said item (*d*) of the said paragraph VII of the said petition so far as the same relates to the transactions of this defendant and its connection with the said several matters and things, in any wise inconsistent with or different from this defendant's averments of the fact and truth respecting the same, that is to say:

This defendant avers that at some time prior to the 27th day of February, 1899, this defendant was informed that the said Simpson and Watkins had been before that time the owners of the share capital, or of the major portion of the share capital, of the following named land and coal mining companies or corporations, whose lands and mines were located in the Counties of Luzerne and Lackawanna, in the State of Pennsylvania, that is to say: The Forty Fort Coal Company, the Mount Lookout Coal Company, the Wyoming Land Company, the Babylon Coal Company, the Sterrick Coal Company, the Edgerton Coal Company, the Hendrick Land Company and the Northwest Coal Company, all corporations of Pennsylvania, and certain shares of the Lackawanna Coal Company, a limited co-partnership of the State of Pennsylvania, and also of the share capital of the Wyoming Electric Light Company, also a corporation of Pennsylvania, and that being so the owners thereof the said Simpson and Watkins had before that time contracted to sell the same and to assign and transfer the said shares and each of them as the purchasers thereof should direct and require; that thereafter the said purchasers had directed and required that the said Simpson and Watkins should enter into an agreement with the said Temple Iron Company covenanting to assign, transfer and set over to the said Temple Iron Company, all their right, title and interest in their said shares of the capital stock and assets and property of the said several corporations and their interest in the shares of the said limited partnerships, free of all debts, liens and liabilities of every kind, save and except as otherwise to be expressly stated in the agreement therefor when executed; that afterwards, to wit: February 27, 1899, the said Simpson
86 and Watkins executed the agreement mentioned and referred to in the answer of the Temple Iron Company herein; that, at some time during the course of the said transactions and before their final consummation, this defendant was offered by the said purchasers, then representing, as this defendant supposes, the said Temple Iron Company, the right and privilege of subscribing for, and did then and there subscribe for, seven thousand four hundred and ninety shares (7490) shares of the capital stock of the said Temple Iron Company of the par value of Seven hundred and forty nine thousand dollars ($749,000), and thereafter, on June 21, 1899, bought and paid for Trust certificates representing Two thousand eight hundred and thirty one (2831) shares of capital stock of the said Temple Iron Company, of the par value of two hundred and eighty three thousand one hundred dollars ($283,100), which were later surrendered upon the delivery of proper certificates representing the said shares, which said last mentioned certificates it still continues to own and hold; that this defendant is not particularly and specifically informed of the contracts pending at the time of the assign-

ment and transfer of the shares of the said several coal companies to the said Temple Iron Company for the sale of the coal to be produced by them severally, nor of the new contracts which have since been made in that behalf, if any such have been made, but it has seen the answer proposed to be exhibited herein by the said Temple Iron Company, and, being so informed respecting the details of the said several matters and things, this defendant believes and avers that the averments of the said answer of the Temple Iron Company are true and correct.

This defendant, answering unto the several matters and things alleged and set forth in item (*e*) of Paragraph VII of the Plaintiff's petition, says that it is an utter stranger to the said several matters and things therein alleged and set forth of and concerning the said alleged transactions of the Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad Company, the Erie Railroad Company and the New York Ontario and Western Railroad Company
87 and the banking house of J. P. Morgan and Company, or of the Delaware Valley and Kingston Railroad Company.

VII.

And by protestation, and not confessing or acknowledging all or any of the matters and things to be true in such manner and form as they are alleged, save as to those which are hereinbefore expressly confessed and acknowledged, for further and additional answer to so much and such parts of the Plaintiff's petition contained in the said item (*c*) of Paragraph VII as allege and charge that the said purchase by this defendant of the said shares of the capital stock of the Central Railroad Company of New Jersey was void, and contrary to the provisions of the Act of July 2, 1890; and seek the decree of this Court that this defendant, its officers, agents, servants and employés, be forever enjoined from voting the aforesaid stock of the Central Railroad Company of New Jersey, which this defendant now holds, or any which it may hereafter acquire, and from voting at any meeting of the stockholders of the said Central Railroad Company of New Jersey, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts and doings of the said Central Railroad Company of New Jersey by virtue of its holdings of the stock therein, this defendant, further answering says:

That its said purchase of the said shares, and the said equitable or beneficial interest therein which it holds therein, subject to the said lien or pledge, and the said Indenture pledging the said shares as collateral security for a part of the purchase money therefor, were then and there wholly local or domestic transactions, dealings and contracts, that is to say: the said agreement for the said purchase and the actual purchase were made in the State of New York and wholly performed there, and the said Indenture effecting the transfer and assignment of this defendant's right, title and interest in
88 the said shares and providing for the deposit and pledge of the certificates representing the same, with the said Trustee, for the benefit and security of those who should become the holders of

the bonds to be issued under and pursuant to the said Indenture, was made in the State of Pennsylvania and wholly performable there; that neither of the said several, distinct and separate transactions bore upon, affected, or otherwise related to trade or commerce among the States, or with foreign nations, and were therefore wholly without the jurisdiction of the Congress of the United States, and the laws enacted thereby. Wherefore this defendant avers that neither of the said transactions and contracts, nor the parties thereto, nor any of them, in respect to the said dealings, transactions or contracts, are or were within the cognizance or jurisdiction of this Court in respect thereof, in this suit, or in any suit to be brought pursuant to the said Act of July 2, 1890.

VIII.

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save in so far as they have been hereinbefore confessed and acknowledged, for a further and additional answer to so much and such parts of the said petition, and the prayers thereof, as seek the decree of this Court that this defendant, its officers, agents, servants and employés, be forever enjoined from voting the aforesaid stock of the Central Railroad Company of New Jersey, which it now holds, and from voting at any meeting of the stockholders of the said Central Railroad Company of New Jersey, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts or doings of the said Central Railroad Company of New Jersey, by virtue of its holdings of stock therein; and
89 that the Central Railroad Company of New Jersey, its officers, directors, servants and agents, be forever enjoined from permitting the stock aforesaid to be voted by this defendant, or in its behalf, by its attorneys or agents, at any corporate election for directors or officers of the said Central Railroad Company of New Jersey, or at any other meeting of the stockholders thereof in their corporate capacity, and that the last named company, its officers, directors, servants and agents be also forever enjoined from paying any dividends to the said Reading Company, its officers, directors, servants or agents, on account of the stock aforesaid, and from permitting or suffering the said Reading Company, or any of its officers or agents, as such officers and agents, to exercise any control whatsoever over the corporate acts of the said Central Railroad Company of New Jersey, this defendant alleges and avers that heretofore, to wit: April 1, 1901, it made and executed a certain Indenture, now here shown to the Court and made part of this answer, whereby it assigned, transferred and pledged unto The Pennsylvania Company for Insurances on Lives and Granting Annuities, a corporation of Pennsylvania, as Trustee, among other things, One hundred and forty five thousand (145,000) shares of the capital stock of the said Central Railroad Company of New Jersey, of the par value of $100. each, being a majority of the whole capital stock of the said Company, in trust, for the benefit and security of the holders of the

bonds and interest obligations, issued and to be issued by this defendant and secured by the said Indenture, and for the enforcement of the payment of the said bonds and interest obligations, when payable, and for the performance of, and compliance with, the covenants and conditions of the said Indenture; that thereupon this defendant caused to be issued and registered on the books of the said Central Railroad Company of New Jersey, in the name of the said The Pennsylvania Company for Insurances and Granting Annuities, Trustee, a certificate or certificates, in due form, representing the said shares, and caused the same to be then and there de-
90 posited with the said Trustee, which then and there became and now remains the legal owner and holder thereof, subject only to the equitable or beneficial interest therein reserved to this defendant by the said Indenture; that, thereafter, this defendant made a series of bonds for the aggregate principal of twenty three million dollars ($23,000,000) with coupons or interest warrants attached, in the several forms set forth in the said Indenture, all of which said bonds were then and there certified and issued by the said Trustee under the said Indenture and still remain outstanding and unpaid in the hands of the public; that by virtue of its power under the said Indenture, in case of the default of this defendant (1) to make payment of any interest on any bond or bonds secured by said Indenture, which shall continue for a period of six (6) months, (2) in the payment of the principal of any bond thereby secured, (3) in the due observance or performance of any other covenant of the said Indenture if continued for six months, the said Trustee holds the right, under the said Indenture, to vote upon the said shares and to collect the dividends thereon, applying the proceeds to the payment of interest upon the said bonds and of the principal, and upon the happening of the contingencies mentioned in the said Indenture to sell the said shares and apply the proceeds for the benefit of the holders of the said bonds.

1. Wherefore this defendant avers and charges that there are not proper parties to the said petition in this behalf, that is to say, the said The Pennsylvania Company for Insurances on Lives and Granting Anuuities, Trustee as aforesaid, and the various persons who are the innocent holders for value of the said bonds issued under and secured by the said Indenture, who have an interest in the said shares and in the dividends to be earned and declared thereon, and there is not any person, party to the said petition or in this suit who represents or has a common interest with the said other persons, whose said interests the said petition or suit affects, and against whose rights and interests in the said shares, under and by virtue of the said Indenture, the said decree so sought would operate most un-
justly.

91 2. And in that behalf, this defendant further avers and charges that the said absent persons ought not to be made parties to this suit, because it appears on the face of the petition that neither the said Indenture nor the assignment and pledge of the said shares thereunder, nor the issue of the said bonds thereunder, were matters, dealings or transactions bearing upon, affecting, or in any

otherwise relating to trade or commerce among the States or with foreign nations, wherefore this defendant alleges that neither the said last mentioned transactions, nor the said last named parties thereto, who are the interested beneficiaries therein to be affected by the said decree, are within the cognizance or jurisdiction of this Court in this suit, or would or could become so if joined and brought in as parties.

3. And further, in that behalf, this defendant avers and shows to the Court here that the said several absent parties may not, consistently with the rules of practice and procedure of this honorable Court, or in the ordinary and usual course of procedure in equity, be made parties to this suit, because, as it appears on the face of the said petition, the same is exhibited against the several other defendants therein named for several distinct matters and causes, in several whereof, as appears by the said petition, the said absent persons are not in any manner interested or concerned, and because it appears on the face of the petition that several of the defendants thereto, that is to say: the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, The Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkes-Barre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company and the Temple Iron Company, are not, and have never been, in any manner, interested or concerned in or with the said acquisi-
92 tion by the Reading Company of its interest in the said shares of the Central Railroad Company of New Jersey, or in or with its disposition of the same, in any wise howsoever.

4. And further in this behalf, this defendant avers that it is advised by Counsel, and believes and charges that in case the said Plaintiff shall nevertheless believe the said above mentioned dealings and transactions in respect of the said shares to be unlawful and void as contrary to the provisions of the said Act of Congress of July 2, 1890, the same can be adjudged and determined by this Court, in a separate suit joining this defendant and the said Central Railroad Company of New Jersey as defendant with the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, as aforesaid, without joining the said other defendants, who, as it appears on the face of the petition, are not in any manner interested in or connected with the said dealings or transactions or any of them, or in any outcome thereof.

IX.

And by protestation, and not confessing or acknowledging all or any of the said matters and things in the said petition and in that behalf to be true in such manner and form as the same are alleged, save as they are hereinbefore acknowledged and confessed, for further and additional answer to so much and such parts of the said petition and the prayers thereof as seek the decree of this honorable

Court that this defendant, its officers, agents, servants and employés be forever enjoined from voting the aforesaid stock of the Temple Iron Company, which it now holds or may acquire, and from voting at any meeting of the stockholders of the said Temple Iron Company, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the actions and doings of the said Temple Iron Company by virtue of its aforesaid holdings of stock therein, and that the Temple Iron Company, its officers,
93 directors, servants and agents be forever enjoined from permitting this defendant or its attorney or agents to vote at any corporate election for directors or officers of the said Temple Iron Company or at any other meeting of the stockholders thereof in their corporate capacity and from paying any dividends to this defendant, or any of its officers or agents, etc., this defendant alleges and avers that the said contract of the said Simpson and Watkins for the sale of their right, title and interest in the shares and assets of the said corporations, and their shares in the said limited partnership, their assignment and transfer thereof to the said Temple Iron Company, this defendant's subscription to the capital stock of the said Temple Iron Company, its subsequent acquisition of the said shares therein mentioned hereinbefore set forth, as well as its present owning and holding of the same were and are wholly local and domestic transactions, wholly performable within the State of Pennsylvania, which did not, and do not, bear upon, affect or otherwise relate to trade or commerce among the States or with foreign nations, and are and were therefore wholly without the jurisdiction of the Congress of the United States and the laws enacted thereby.

Wherefore this defendant alleges that neither the said dealings, transactions or contracts, nor either of them, nor the parties thereto, especially this defendant, are within the cognizance or jurisdiction of this honorable Court in respect thereof in this suit.

X.

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save as they are hereinbefore acknowledged and confessed, this defendant for a further and additional answer says:

1. That it appears by the said petition that the same is exhibited against this defendant, and the several other cor-
94 & 95 porations therein named as defendants thereto, for distinct matters and causes, in several whereof, as appears by the said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore altogether multifarious.

2. That it appears by the said petition that the same is exhibited against this defendant and the several other corporations named therein as defendants, in several whereof, as appears by the petition, the said other defendants are not, and neither of them is, in any manner interested or concerned, and in respect thereof, this suit can proceed to hearing and decree without the presence of any of the said

other defendants, wherefore the said petition is altogether multifarious.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith it is by the said petition charged, without this, that any other matter, cause or thing in said Plaintiff's petition contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.]

READING COMPANY.
By W. R. TAYLOR, *Secretary.*
CHARLES HEEBNER,
Solicitor for Defendant.

J. D. CAMPBELL,
Of Counsel.

96 [*Answer P. & R. Ry. Co. Filed August* 30, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

The Separate Answer of Philadelphia and Reading Railway Company.

This defendant now, and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petition contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it
97 is material or necessary for it to make answer unto, answering, says:—

I.

This defendant denies that it is a common carrier particularly engaged in the transportation of anthracite coal from the mines or anthracite coal regions of Pennsylvania to the markets of that and other States, as charged and set forth in the Plaintiff's petition or otherwise, saving and excepting as herein specifically and expressly admitted and averred.

It admits, however, that it is a common carrier engaged in Interstate transportation, particularly in the transportation of anthracite

coal from the certain anthracite coal mines located on its own lines of railroad and their several branches, in the Counties of Northumberland, Columbia, Schuylkill and Dauphin, in the State of Pennsylvania, to various points on its lines of railroad in the said State and in the State of New Jersey, and also from the said mines to various points of connection in the State of Pennsylvania with other railroads for further transportation in the said State of Pennsylvania and in other States, and to points in the Dominion of Canada.

It is a stranger to all and singular the matters and things set forth in Paragraph I of the Plaintiff's petition, respecting the other defendants herein save that it admits that the defendant, Reading Company, is the owner of an equitable interest, subject to certain liens or pledges not material, as this defendant is advised by Counsel, to be particularly mentioned herein, in the major portion of the share capital of this defendant.

II.

For answer to the allegations contained in Paragraph II of Plaintiff's petition, this defendant says:—

This defendant denies, as it is alleged, that, in the absence of the supposed and alleged unlawful contracts and combinations in the said petition afterwards charged and described, or by any other means howsoever, the said defendant carriers would have been, or
98 would or could become, either active competitors or competitors in any form whatsoever, in the transportation of anthracite coal from the mines located on this defendant's railroad or branches to the tide water or any other markets whatsoever. This defendant denies that any of the other of said defendant carriers is, or can become a competitor with this defendant for the transportation of anthracite coal from the mines located on this defendant's line of railroad to the said markets or any other market.

This defendant denies that this defendant is or can become an active competitor, or a competitor in any form with the said other defendant carriers or with any one or more of them, in the transportation of anthracite coal from the mines located on their several lines of railroad or any of them, to the said markets or any of them.

This defendant avers that neither of the said other defendant carriers has any line of railroad, branch or other form of railroad track, connecting with any of the mines or collieries located on the lines of this defendant's railroad whereby it can enter into competition with this defendant for the transportation of anthracite coal from the said mines or collieries to any market whatsoever.

This defendant further avers that it hath not, and never had, any line of railroad, branch or other form of railroad track connecting its lines of railroad with any of the mines or collieries located on any of the lines of railroad of any other of the said defendant carriers, whereby it could by any manner of possibility enter into competition with them, or any of them, for the transportation of anthracite coal from the said last mentioned mines or collieries to any market whatsoever.

This defendant admits that, in respect of the anthracite coal pro-

duced and to be produced at the various mines or collieries located on its various lines of railroad and branches, it has possessed, and does possess, the sole and only means of transportation of said products by railroad to or toward their markets, but avers that it hath no knowledge of and concerning the situation of the
99 lines of railroad of the said other defendant carriers in respect of the mines and collieries located on their several lines of railroad and branches.

This defendant denies that, in the year 1905 or at any other time or period, the total tonnage, or any other portion or fraction, of the coal transported from the mines, was divided among the several railroads in the proportions set forth in the said paragraph as alleged therein, or in any other proportions whatsoever; on the contrary, this defendant avers that no part or portion whatsoever of the tonnage produced at the mines or collieries located on its lines of railroad and branches was then, or before or since, ever divided or apportioned in any form or manner whatsoever with any other carrier, and it avers that it has at all times, up to the filing of this answer, taken and carried on and over its own lines of railroad, the entire tonnage produced from the mines and collieries located on its lines and branches to the destination thereof when reached by them, or toward the destination thereof when reached by the railroads of other carriers or by means of water transportation.

It denies wholly, and in each and every detail, the insinuation of the statements of the said paragraph and the inference intended to be drawn therefrom that it did then, or either before or since, divert any part of the said tonnage originating on its lines of railroad and consigned to points thereon or reached or to be reached thereby to any other carrier whatsoever, whether pursuant to the said alleged unlawful contracts or combinations, or in any otherwise howsoever.

It further denies wholly, and in each and every detail, the insinuation of the statements of the said paragraph and the inference intended to be drawn therefrom that it did then, or either before or since, receive from or through any other of the defendant carriers, for transportation, the tonnage originating on any of their several lines of railroad, or any part thereof. And it denies that it ever at any time participated in any division of tonnage of any kind whatsoever with the said other defendant carriers.

100 This defendant is a stranger to the facts and circumstances respecting the operations of the other defendant carriers, and other carriers mentioned in the table or schedule embodied in the said paragraph. It only has knowledge of and concerning its own operations and of the service of transportation it has rendered in respect of the coal and other traffic it has received for transportation, but it has information from general and indefinite statistical data published by the Government of the United States, from the data published in Trade Journals, and other publications, of and concerning the quantities of anthracite coal transported by the said several other defendant carriers, and other carriers, and in respect thereof this defendant avers that it is advised by Counsel that no

further answer in respect of the allegations contained in the said paragraph is necessary or required or material to be made.

III.

This defendant, for answer to the matters and things alleged and set forth in Paragraph III of the Plaintiff's petition, denies that it hath any knowledge whatsoever of and concerning the rights, powers and privileges of any of the defendants save its own.

It denies that the said Reading Company, either as alleged in the said petition, whether by virtue of its said equitable or beneficial interest in the share capital of this defendant, or in any otherwise howsoever, holds, possesses or exercises, either directly or indirectly, any right, power or authority in the premises, saving only the right of the said Reading Company to direct the voting upon the shares in which it holds the said beneficial or equitable interest, at the meetings of the shareholders of this defendant. It denies that, being a transportation company as aforesaid, it is one and the same thing, or in any otherwise identical, in any legal, practical or other sense with the said Reading Company, or with The Philadelphia and Reading Coal and Iron Company or any other of the said defendants.

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IV.

This defendant, answering the several matters and things alleged and set forth in Paragraph IV of the Plaintiff's petition, denies that it hath any knowledge whatsoever of or concerning the same. It denies that it has, or ever had, any knowledge of, or that it is otherwise aware of or acquainted with, any of the supposed and alleged unlawful contracts, combinations or conspiracies set forth in the Plaintiff's petition, and it denies that it, at any time or place, or under any circumstances whatsoever entered into, became a party to, or in any otherwise participated in, any combination, lawful or otherwise, of the nature mentioned and set forth in the Plaintiff's petition, or that it has at any time or place or under any circumstances whatsoever entered into or become a party to, or in any wise participated in, any unlawful contracts, combinations or conspiracies whatsoever.

V.

Answering the allegations set forth and contained in Paragraph V of the Plaintiff's petition, this defendant says that, having herein otherwise shown that it hath no interest, direct or otherwise, in the production or sale of anthracite coal, nor any other interest save in the transportation thereof, this defendant is advised by Counsel that it is not material or pertinent to make answer unto the said allegations.

VI.

This defendant, answering the vague, indefinite, impertinent, uncertain and scandalous charges and allegations and statements set

forth and alleged in Paragraph VII of the Plaintiff's petition, waiving exception thereto, for their obvious scandal and impertinence, denies that it ever, at any time, from any motive or consideration whatsoever, either such as are alleged and recited in the said paragraph or otherwise, whether in concert, co-operation or com-
102 bination with the said other defendants, or [illegible] of them, or with any other person, firm or corporation, [illegible] in any otherwise howsoever, entered into any scheme, combination or conspiracy for any purpose, or with any result whatsoever, whether to acquire the power to control, regulate, restrain or monopolize the production or sale of anthracite coal or its transportation or otherwise.

And this defendant further answering says that it denies that, as alleged in item (*a*) of said paragraph, whether in order to prevent the output of the socalled independent mines from being sold throughout the several states in competition with the output from the mines located on its own lines of railroad, or from mines owned or controlled by it or by any subsidiary company, or for any other purpose, it ever entered into or now maintains an agreement, combination or conspiracy to use the power of the defendant carriers to obtain control of the sale and disposition of the said output of the said so-called independent mines in the markets of the several States, or particularly or otherwise in the market at New York Harbor, whether in violation of the said Act of July 2, 1890, or otherwise, or with any other purpose or result whatsoever. It denies each and other allegation contained in the said item (*a*) of the said paragraph, in anywise inconsistent with, or different from the facts and truth of and concerning the same hereinafter averred and set forth, that is to say:

This defendant had not been organized and was not in existence during the years 1890, 1891, 1892, 1893 and 1894, mentioned in the said Paragraph VII. It is a railroad corporation organized under the laws of the Commonwealth of Pennsylvania, as of November 17, 1896, as will be shown by the Letters Patent of the said Commonwealth issued by the Governor thereof on that day, which this defendant craves leave to produce and introduce in evidence at the hearing; it avers that it did not enter into the possession and operation of its various railroads and branches until the first day of December, 1896, when the same were surrendered and delivered to it pursuant to the order and decree of this Court entered in a
103 suit therein pending wherein Thomas C. Platt was Plaintiff, and The Philadelphia and Reading Railroad Company and others were defendants, to No. 1 of April Sessions, 1893; wherefore it is an utter stranger to any of the transactions of any of the parties hereto or any of the said matters and things so alleged prior to the said December 1, 1896.

This defendant denies that it or any company subsidiary to it owns or controls, either directly or indirectly, in any manner whatsoever, any portion of the said alleged anthracite deposits or any interest therein whatsoever, or ever had any right, title or interest therein of any kind or nature whatsoever. This defendant denies that, either directly or through the instrumentality of any subsidiary

company or coal company, it ever made any agreement whatsoever with any operator of coal mines along its lines at any time or any contract for the sale of the so-called independents' output to this defendant, or with any coal company, under any promise, stipulation or condition whatsoever. It denies that it, either directly or through any agency whatsoever, fixed the percentages to be paid by it to any coal company under said or any other contract. It denies that it ever entered into any arrangement intended to draw or to force the major or any part of the so-called independent operators into making the said contracts or any contracts whatsoever, save the contract to be implied from the delivery of anthracite coal to it for transportation to or toward its destination, saving and excepting from the said averments its current contracts made from time to time for the purchase of the anthracite coal required for use in the operation of its railroads and their various accessories.

And this defendant, answering unto the several matters and things alleged and set forth in item (*b*) of Paragraph VII of Plaintiff's petition, says that it is an utter stranger to the said alleged transactions between the said Erie Railroad Company and the New York, Susquehanna and Western Railroad Company, and denies that either of the said last named companies is or ever was a competitor, either with the other or with any other carrier for the anthra-
104 cite coal produced or purchased or sold from mines located on the lines of railroad of this defendant and their branches.

And this defendant, answering unto the several matters and things alleged in item (*c*) of the Plaintiff's petition, says that it is an utter stranger to the said alleged transactions between Reading Company and the supposed owners and holders of shares of the capital stock of the Central Railroad Company of New Jersey; but it admits that the said Reading Company is an equitable or beneficial owner of an interest in certain of the shares of the capital stock of this defendant as is hereinbefore admitted and alleged.

This defendant, answering unto the several matters and things alleged and set forth in item (*d*) of Paragraph VII of the Plaintiff's petition, says that it is an utter stranger to the said several matters and things alleged and set forth respecting the said so-called independent operators in the Wyoming and Lehigh regions, their promotion of the organization of the New York, Wyoming and Western Railroad, to the said alleged transactions of the said Simpson and Watkins and their motives therefor, to the said alleged transactions of Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company, and to all and singular the several other matters and things alleged and set forth in the said item of the said paragraph. It denies that the construction of the said so-called independent railroad would have introduced competition into the transportation of the anthracite coal produced on the lines of this defendant's railroads or branches to tide water points or any other points. It admits, as is hereinbefore admitted, that said Reading Company holds

an equitable or beneficial interest in the major portion of the shares of the capital stock of this defendant. It denies that it en-
105 tered into any agreement, combination and conspiracy to prevent the completion of the said projected independent and competing railroad by diverting and drawing away from it the support and influence of its principal promoters, or those who would have furnished it with a large part of its tonnage or in any other wise. It denies that it participated at any time or in any manner in the pooling or dividing of the traffic to be moved from the collieries theretofore owned by the said firm of Simpson and Watkins to market points in other states and it avers that none of the collieries which were of the said Simpson and Watkins are located on the lines of or are reached by the tracks of this defendant or its branches and avers that its said tracks do not have, and never had, any connection whatsoever with said collieries and avers that no part of the product of said collieries was ever at any time transported by this defendant over any part of its lines of railroad. It denies that this defendant is or was at any time, in any form, identical or otherwise the same thing with said Reading Company, save only as hereinbefore admitted and averred in respect of the right of the said Reading Company to direct the voting of the shares of the capital stock of this defendant, in which it has an interest, at the meetings of the shareholders of this defendant.

This defendant, answering unto the several matters and things alleged and set forth in item (*e*) of paragraph VII of the Plaintiff's petition, says that it is an utter stranger to the said several matters and things alleged and set forth in the said item of the said paragraph. It avers that it has no knowledge of, and never had any interest in or connection with, the said alleged transactions of the Pennsylvania Coal Company and the Erie and Wyoming Railroad Company, the Delaware Valley and Kingston Railroad Company, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the New York Ontario and Western Railway Company or the banking house of J. P. Morgan and Company in connection with the said alleged matters and things therein set forth in any manner whatsoever.

106 **VII.**

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save as they are hereinbefore confessed and acknowledged, this defendant for a further and additional answer says:

1. That it appears by the said petition that the same is exhibited against this defendant, and the several other corporations therein named as defendants thereto, for distinct matters and causes, in several whereof, as appears by the said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore altogether multifarious.

2. That it appears by the said petition that the same is exhibited against this defendant and the several other corporations named

therein as defendants, in several whereof, as appears by the petition, the said other defendants are not and neither of them is in any manner interested or concerned, and in respect thereof, this suit can proceed to hearing and decree without the presence of any of the said other defendants, wherefore the said petition is altogether multifarious.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith it is by the said petition charged, without this, that any other matter, cause or thing in said Plaintiff's petition contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, main-
107 tain and prove, as this honorable court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

PHILADELPHIA AND READING RAILWAY COMPANY,
[SEAL.]
(Sd.) By W. R. TAYLOR, *Secretary.*
CHARLES HEEBNER,
Solicitor for Defendant.

J. D. CAMPBELL,
Of Counsel.

108 [*Answer Lehigh Valley R. R. Co. Filed September* 12, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

Separate Answer of the Lehigh Valley Railroad Company, One of the Defendants Herein.

This defendant now and at all times hereafter, saving and
109 reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said Petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to answer, saith:

I.

This defendant admits that it is a common carrier, engaged in interstate transportation and to some extent in the transportation of anthracite coal from mines in Pennsylvania to markets of that and

other States. If the other matters set out in the first paragraph of the Petition are material it prays that they may be duly proved.

II.

This defendant denies the existence of any unlawful contracts or combinations as alleged in the second and other paragraphs of the Petition to which this defendant is in any way a party. It further denies that in the absence of said alleged unlawful contracts and combinations in said Petition set forth or by any other means whatever, the railroad companies therein referred to as the defendant carriers ever would be active competitors in any form whatever in the transportation of anthracite coal from the mines located on this defendant's railroads or branches to tide-water markets or elsewhere. None of the other railroads described in the Petition as the defendant carriers are or can become competitors to any substantial extent with this defendant for the transportation of anthracite coal from the mines located on this defendant's railroad or branches to the said markets or any other market. Each of the railroads described in said Petition as defendant carriers, has branches extending to different mines in the various anthracite coal regions, the
110 coal mined from which it transports to the purchasers thereof. Except in a very few and unimportant cases no other railroad company has any lines extending to any of the mines to which the railroad and branches of this defendant extend. The percentage of total anthracite coal mined which is carried by each of the defendant carriers is determined, so far as this defendant is informed, simply by the number of mines to which its railroads extend and the amount of coal produced thereat.

This defendant admits that on or about the first day of November, 1905, it purchased a majority in interest in the capital stock of the Delaware, Susquehanna & Schuylkill Railroad Company. Except as herein set forth, this defendant, being without sufficient knowledge, does not admit any of the matters alleged in the second paragraph of the Petition, and prays that if material the same may be duly proved.

III.

This defendant has no knowledge as to the franchises of the Delaware, Lackawanna and Western Railway Company or as to the franchises or corporate powers of any of the defendants other than itself and the Lehigh Valley Coal Company and prays that if material the same may be duly proved. This defendant is willing to admit that it has not the power under its charter to mine coal or to buy, sell or otherwise deal therein for profit; but it avers that it has the right under said charter, to own the shares of stock of other companies, including companies engaged in the mining, buying and selling coal for profit. This defendant admits that it owns a majority in interest in the capital stock of the Lehigh Valley Coal Company,
111 and that the President of this defendant is also the President of the Lehigh Valley Coal Company. This defendant denies that the Lehigh Valley Coal Company and itself are in any way identical

or that any identity between them has been recognized by the Supreme Court of the United States or by any other court. This defendant was incorporated for the purpose of carrying for hire persons and commodities which may be tendered to it for that purpose. The Lehigh Valley Coal Company is a separate corporation and was incorporated for the purpose of mining, buying and selling coal and owning coal lands. The business of the two corporations is wholly distinct and independent.

IV.

This defendant admits that in the New England and Middle Atlantic States anthracite coal is an article largely used for domestic purposes; but it denies that anthracite coal is an article of prime necessity or is so universally used in said territory. The particular kind of coal used in the various portions of this country is determined by the source of supply, the purpose for which it is used in each particular case, and the cost of the mining and distribution thereof. This defendant denies that by reason of any unlawful contracts, combinations or conspiracies to which this defendant is a party, either directly or indirectly, competition in the mining or selling of coal is in any way stifled or restricted.

Except as hereinbefore set forth, this defendant, being without sufficient knowledge, does not admit the truth of the matters alleged in the Fourth paragraph of the Petition and prays that, if material, the same may be duly proved.

112 V.

This defendant, being without sufficient knowledge, does not admit the truth of the matters set forth in the Fifth paragraph of the Petition or any of them and prays that, if material, the same may be duly proved.

VI.

This defendant admits that on or about the eleventh day of February, 1892, it leased its railroad to the Philadelphia & Reading Railroad Company upon terms satisfactory to this defendant and its stockholders for the term of nine hundred and ninety-nine years. It denies that so far as this defendant was concerned said lease of its railroad was in any way affected by any decree of any Court of the State of New Jersey. The lease made by this defendant to the Philadelphia and Reading Railroad Company continued in force until the eighth day of August, 1893, when it was duly cancelled and terminated and this defendant resumed possession of its railroad and property. Said lease was not made by this defendant for the purpose of creating an anthracite coal monopoly or for the purpose of creating any unlawful combination, but solely to secure to its stockholders the benefits afforded them by said lease. Except as herein set forth, this defendant has no knowledge as to the matters set out in the 6th paragraph of the Petition and prays that, if material, the same may be duly proved.

VII.

This defendant has no knowledge as to the average price of anthracite coal at tide-water during the years 1890 to 1895, as alleged in the Seventh Paragraph of the Petition and prays that, if ma-
113 terial, the same may be duly proved. This defendant denies that at any time it entered into any unlawful agreement, scheme, combination or conspiracy, by which the parties thereto acquired or sought to acquire the power to control, regulate, restrain or monopolize either the production of anthracite coal or its transportation from the mines in Pennsylvania to any other points or its price or sale at any points; or that as the result of any action to which this defendant was a party, competition in the transportation or sale of anthracite coal has been in whole or in any part unlawfully suppressed or the price thereof to consumers in any degree unlawfully enhanced. This defendant denies as it has heretofore denied that it ever entered into any illegal combination or into any combination in furtherance of any illegal purpose, relative to the mining transportation purchase or sale of coal.

This defendant denies that it has entered into any contracts with any miners of coal along its lines for the purchase or sale of the products of their mines. This defendant denies that it entered into or that it now maintains any unlawful agreement, combination or conspiracy to use its power as a carrier of anthracite or otherwise to obtain control of the sale or disposition of the output of any so-called independent mines of which it is the carrier in any market whatever, in violation of the Act of July 2d, 1890, or of any other Act of Congress. If the other matters alleged in Paragraph Seven (*a*) of the Petition are material, this defendant prays that the same may be duly approved.

This defendant has no knowledge as to the matters set out in Paragraph Seven (*b*) of the Petition and prays that the same, if material, may be duly proved.

This defendant has no knowledge as to the matters set
114 out in Paragraph Seven (*c*) of the Petition and prays that if material, the same may be duly proved.

As to so much of Paragraph Seven (*d*) of the Petition as purports to set out the organization and operation of The Temple Iron Company this defendant prays that reference may be had to the answer of said company with the same force and effect as if the same were herein set forth at large. Except as set out in said answer this defendant has no knowledge as to the matters set out in Paragraph Seven (*d*) of the Petition. This defendant denies that any act taken by it in connection with the organization or development of The Temple Iron Company was in any way unlawful or in excess of this defendant's corporate powers.

This defendant has no knowledge as to the matters alleged in Paragraph Seven (*e*) of the Petition and prays that if material, the same may be duly proved.

This defendant denies as it has hereinbefore denied that it has at *at* any time been engaged in any unlawful combination or conspiracy

with reference to the mining, transportation, purchase or sale of anthracite coal or that it has in any respect violated any Statute of the United States or of the State of Pennsylvania relative thereto.

VIII.

This defendant denies that by virtue of the premises or by virtue of any matter set out in the Petition or in the answers thereto, the Petitioner is entitled to any relief by way of discovery or otherwise from this defendant.

IX.

This defendant prays that it may under the rules of court
115 in such case made and provided be permitted to avail itself of all matters of defense in law or equity to the merits of the Petition in its above answer set forth, of which it might have availed itself by demurrer or plea in bar with the same force and effect as though it had filed a separate demurrer or demurrers, plea or pleas in bar.

X.

This defendant prays to be thus dismissed with its reasonable costs in this behalf most wrongfully sustained.

LEHIGH VALLEY RAILROAD COMPANY,
By D. G. BAIRD, *Secretary.*

[Seal L. V. R. R. Co.]

JOHN G. JOHNSON,
Solicitor for Defendant.

116 [*Answer D., L. & W. R. R. Co. Filed September* 23, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including The Delaware, Lackawanna and Western Railroad Company, Defendants.

Separate Answer of Defendant, The Delaware, Lackawanna and Western Railroad Company.

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said petition contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to answer, says:

I.

This defendant admits that it is a common carrier engaged
117 in interstate transportation, and to some extent in the transportation of anthracite coal from mines in Pennsylvania to markets of that and other States. If the other matters averred in the said First paragraph or the said petition are material, it prays that strict proof be made thereof.

II.

This defendant denies that it operates a line of railroad from the anthracite fields to Oswego on Lake Ontario. It does operate, in conjunction with the Syracuse, Binghamton & New York Railroad Company, with whose railroad it connects at Binghamton, a line of railroad from a part of the anthracite fields to Oswego. It admits that it operates a line of railroad from a part of the anthracite fields to Buffalo on Lake Erie, and to other points in central and western New York. It denies that there are or have been any unlawful contracts or combinations as alleged in Paragraph Two, and elsewhere, in said petition, to which this defendant is or was in any way a party. It further denies that in the absence of said unlawful contracts and combinations alleged in said petition, or by any other means whatever, the defendant carriers named, ever could become active competitors in any form in the transportation of anthracite coal from the mines located along the lines of this defendant railroad, to tide-water or elsewhere. Said several other railroads mentioned in said petition are not and cannot become competitors in any substantial degree, with this defendant, in the transportation of anthracite coal from said mines located along the lines of this defendant railroad, to tide-water market or any other market. Said defendant rail-
roads mentioned in said petition, each have branches extend-
118 ing to different mines in the anthracite region, and transport coal mined therein to the purchasers thereof. With few exceptions no other railroad has branches extending to any of the mines along the line of this defendant railroad to which its branches extend.

Defendant further says that there was no division between the railroads of the total tonnage of anthracite coal in 1905, as alleged in said petition. Except as hereinbefore set forth, being without sufficient knowledge, it does not admit any of the matters alleged in said Second paragraph of the petition herein, and prays that if material, the same be duly proved.

III.

This defendant admits that its franchises authorize it to own and operate coal mines in the State of Pennsylvania, and to buy and sell coal, as well as to transport persons and property as a common carrier, all of which it does. Except as herein set forth, it has no knowledge of the matters and things in said Paragraph Three set forth, and prays that if material, the same be proved.

IV.

This defendant denies that anthracite coal is an article of prime necessity anywhere. It denies that said product is universally used for domestic purposes throughout the New England and Middle Atlantic States, or elsewhere, or to any great extent in any part of the country. Other fuels equally as good, including wood, bituminous coal and coke, are used throughout large sections of this country in place and stead of anthracite coal.

This defendant denies that it has any knowledge of the dimensions, quantity or quality of the area of unmined anthracite coal referred to in said paragraph, or of the proportion thereof owned or controlled by any of the alleged owners thereof, save that this
119 defendant does own and lease and therefore control an uncertain and indefinite proportion of said unmined area containing or supposed to contain anthracite coal.

It denies that it has any knowledge as to the proportion of the annual supply of anthracite coal produced by any of said independent operators, or by the carriers not parties hereto.

It denies that it entered into or became a party to or participated in anywise whatsoever in any of the supposed or alleged unlawful contracts, combinations or conspiracies asserted in said paragraph. There are no contracts, combinations or conspiracies that stifle competition in the New York market or elsewhere. Many so-called independent operators do compete with this and other defendants herein in the said coal markets, and are free to do and market anthracite coal produced by them in such markets as they choose.

V.

For answer to the allegations in Paragraph Five of the said petition, this defendant denies that it has knowledge of the practice of other producers in respect to said matters and things, but so far as concerns its own business, it denies that its surplus of anthracite coal, namely, that portion not consumed in Pennsylvania, is carried chiefly to New York harbor, or is there distributed by water and railroad or otherwise to points in the New England and Middle Atlantic States, and it says that by far the greater portion of anthracite coal produced and purchased by this defendant never reaches tide-water at New York, but is transported to and marketed in the territory to the north, northeast, northwest and west of New York harbor.

It denies that New York harbor is the principal distributing
120 point for the surplus output of anthracite coal, and denies that the market price of anthracite coal in the several states is or can be controlled by fixing the market price in New York.

VI.

This defendant has no knowledge as to the matters and things set forth in Paragraph Six of the said petition, and prays that if material the same may be duly proved.

VII.

This defendant for answer to the allegations in Paragraph Seven of said petition, denies that the average price of anthracite coal at tide water, rose and fell as alleged, or that the cancellation of said leases therein mentioned, restored competition or caused prices of anthracite coal to again decline in 1894 and 1895. And it avers that for a period of years prior to 1893, this country was unusually prosperous and prices of material, of labor and products of labor, were continually rising. For a period of years subsequent to the panic of 1893, and as a result thereof, business was depressed generally, and the prices of material, of labor and the products of labor fell. Among other products affected by the said depression in business and prices, was anthracite coal.

It denies that it ever, from any motives whatsoever, either such as are alleged in said paragraph, or any other motive, whether in concert with said other defendants or any of them, or any other person, firm or corporation, or in anywise howsoever entered into any agreement, scheme, combination or conspiracy, for any purpose or with any result whatsoever, whether to acquire the power to control, regulate, restrain or monopolize the production or sale of anthracite coal or its transportation, or otherwise, as averred and charged in said petition.

121

And this defendant further answering, denies that as alleged in subdivision (*a*) of the said paragraph, whether in order to prevent the output of so-called independent mines from being sold throughout the several states in competition with the output from its own mines, or the mines of others, or for any purpose, whatever, it entered into, maintained, or now maintains, an agreement, combination or conspiracy with the said other defendants, or any of them, or with any other persons whomsoever, to use the power of the carrier companies, or any of them, to obtain the control or the disposition of the aforesaid output of the independent mines in the markets of the several states, or particularly in the so-called great distributing market in New York harbor, or with any other purpose whatsoever.

This defendant denies each and every allegation contained in said Subdivision (*a*), the purposes of the matters and things therein averred, and each and every inference drawn therefrom in respect of its purchase of coal and of its contracts therefor, in any wise inconsistent with the facts relating thereto hereinafter averred and set forth, that is to say, having as hereinbefore alleged the power and authority so to do, this defendant early in its corporate existence, and long prior to 1890, acquired anthracite coal lands and mines in Pennsylvania and was actively engaged in mining, purchasing and selling coal, and has since continued therein, and has acquired from time to time various other coal lands and mines which it has continued to own, hold and operate. Since defendant has engaged in the said business, there have always been and now are many individuals, firms and corporations engaged in the like business of mining and selling anthracite coal in the vicinity of the mines and coal lands of the defendant, from some of whom in the

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usual and regular course of business, it has been in the practice of purchasing coal for re-sale, and of making contracts therefor, which practice has continued to the present time. The motives and objects, among others, underlying the making of such purchases and contracts therefor as it has entered into, were the greater resulting convenience and economy of handling this defendant's own products, and the decreased average cost per ton of handling and marketing because of the distribution of certain fixed expenses over a larger tonnage.

Subsequent to 1892, this defendant has had contracts with operators located along its lines for the purchase of their productions of coal, at a stated percentage of the average price of such coal at tidewater, as follows: Clear Spring Coal Company, Kingston Coal Company, Pancoast Coal Company, William Connell & Co., Mount Lookout Coal Company, Forty Fort Coal Company, Lackawanna Coal Company, Peoples' Coal Company, George F. Lee Coal Company and North End Coal Company. And at the time of the filing of the petition herein, this defendant had existing contracts for the purchase of coal with the following named operators, viz.: Clear Spring Coal Company, Pancoast Coal Company, Mount Lookout Coal Company, Lackawanna Coal Company, Peoples' Coal Company, George F. Lee Coal Company and the North End Coal Company. Said contract with the Clear Spring Coal Company was entered into on or about September 21st, 1901. It was a renewal and continuance of a contract therefore had with the Clear Spring Coal Company, a limited partnership, which said last mentioned contract was a continuance and renewal with modifications, of a previous contract
123 dated January 12th, 1882, between this defendant and the firm of Dewitt & Cake. Said contract with the Pancoast Coal Company was made and entered into on or about July 5th, 1899, and has continued thence to the present time. The said contract with the Mount Lookout Coal Company was in effect at the time of the purchase by the Temple Iron Company of the interest of Simpson & Watkins in said coal company in or about February, 1899, and said contract has continued thence, with modifications, to the present time. The said contract with the Lackawanna Coal Company was made August 27th, 1901, and has continued in force and effect to the present time. The said contract with the Peoples' Coal Company was made October 26th, 1899, and has continued in force and effect to the present time. The said contracts, two in number, with George F. Lee Coal Company, were made, one March 11th, 1903, the other May 1st, 1907, and have severally continued in force and effect since their respective dates to the present time. The said contract with the North End Coal Company was entered into May 26th, 1907, and has since continued in force and effect.

The said contract with the Kingston Coal Company hereinbefore referred to, was but a continuance with modifications of a contract originally made in 1878, which said last mentioned contract was renewed with modifications on or about September 21st, 1901, and thence continued in force until it expired November 8th, 1906. Said contract with William Connell & Co. hereinbefore referred to, was

but a continuance with modifications of a contract originally made January 16th, 1892, which said last mentioned contract continued in force and effect until September 25th, 1901, when it was
124 with modifications renewed and thence continued in force and effect until the purchase by this defendant of the operations of the said contractors. The said contracts hereinbefore referred to with the Mount Lookout Coal Company and the Forty Fort Coal Company, were in force and effect at the time of the purchase of said properties by the Temple Iron Company in or about February 1889, and said contract with the Mount Lookout Coal Company has, with modifications, since continued in force and effect.

In cases where the name of the contractor mentioned in the list of contracts as having existed subsequent to 1892, has been repeated in the list of contracts mentioned as existing at the time of the filing of the petition herein, the last mentioned contract is either the identical contract set forth in the first mentioned list, or a renewal or continuance of the contractural relation referred to in the said first mentioned list.

Defendant further says that while some of said contracts are generally in the form of Exhibit "A" attached to the petition herein, others differ materially therefrom, and for greater certainty defendant prays leave to produce and introduce in evidence at the hearing each and every of the said contracts and the various renewals thereof.

And this defendant says that neither the said contracts, nor the negotiations leading up thereto, set forth in plaintiff's petition, were designed or intended, nor did they have the effect to draw or coerce the great majority or any majority, or any number of the so-called independent operators located on the lines of this defendant, into making the contracts described in the plaintiff's petition so as to prevent them from selling their output in competition with this
125 defendant, or with any other person or party, or with any other design or purpose whatsoever. And this defendant avers that the number of said independent operators with which it then had or made contracts, or with which it has since made contracts for the purchase of their output, was but a small proportion of the total number of so-called independent operators located along its lines. This defendant denies that in pursuance of any previous or other agreement between the several defendants herein, or any of them, it offered to make, or did make and conclude, with a majority of the so-called independent operators along its lines, new contracts agreed upon beforehand by the defendant carriers in concert, as alleged, but it admits that it did make the above mentioned contracts and renewals with the said so-called independent operators with whom it had pre-existing contracts, as hereinbefore set forth, not from any of the motives, considerations or inducements set forth and alleged in the plaintiff's petition, nor as the result of any concert or agreement between this defendant and any or all of the other defendants. The main considerations inducing said contracts were the increased cost of mining, particularly cost of labor, as compared with such cost prior to the year 1900, and the resultant demand of the independent operators for a corresponding raise in the price of their

product. Moreover, said contracts provided for a higher standard of preparation of coal sold thereunder.

This defendant denies that it directly or indirectly fixed the percentages to be paid by it under said contracts at a point which bore such a relation to the published rates of transportation that any independent operator who entered into one of such contracts realized more on his coal per ton than was realized by any other in-
126 dependent operator who shipped coal, equally well prepared, upon his own account and paid the published rates of transportation therefor. This defendant denies that it paid any sum whatever, either directly or indirectly, for the privilege of controlling the sale or disposition of the anthracite coal mined by the so-called independent operators, with a view to preventing them from selling their output in competition with the output of defendant's own mines.

This defendant denies that said contracts are in reality devices to stifle competition and create a monopoly in the sale of anthracite coal through the several states, as alleged in the petition; on the contrary, this defendant alleges that said contracts are valid and subsisting contracts for the sale in Pennsylvania of coal mined and to be mined there, lawfully made in the State of Pennsylvania between citizens of the said state, and under the laws thereof, performable and to be completely performed in said state, and that the said contracts are not, nor is any of them, subject to or in violation of the provisions of the said act of Congress of July 2d, 1890, or any other act of Congress.

And this defendant answering the allegations of Subdivision (*b*) of the said Paragraph Seven of said petition, say that it has no knowledge of or concerning the matters and things in the said subdivision set forth, and prays that if material, proof thereof be duly made.

For answer to the allegations of Subdivision (*c*) of said Paragraph Seven of said petition, this defendant says it is a stranger to all and singular the matters and things in the said subdivision set forth, of and concerning the other defendants and their transactions, and that if material, it prays that proof thereof be duly made.

Answering the allegations of Subdivision (*d*) of said Para-
127 graph Seven, this defendant says: As to so much of the said subdivision as purports to set forth the organization and operation of the defendant, the Temple Iron Company, this defendant adopts the answer of the said company filed herein, and prays that reference thereto may be had with the same force and effect as if the same were herein set forth in full. Except as set forth in the said answer of the Temple Iron Company, this defendant has no knowledge as to the matters averred in said Subdivision (*d*), Paragraph Seven, of said petition. This defendant says that each and every of its acts done in connection with the organization or development of the Temple Iron Company was lawful and well within the power and authority of this defendant, and it denies that any of the said acts was in violation of any law.

Answering the allegations of Subdivision (*e*) of Paragraph Seven

of said petition this defendant says, that it has no knowledge of the matters and things therein set forth, and if material prays that the same be duly proved.

VIII.

And, further answering the said petition, this defendant says, that it appears in the said petition that the same is exhibited against this defendant, and the several other defendants therein named, for distinct matters and causes in several, whereof as appears by the said petition, this defendant is not in any manner interested or concerned, and that the petition is altogether multifarious. That it appears by the said petition that the same is exhibited against this defendant and the several other defendants named therein, in several, whereof as appears by the petition the said other defendants are not, and neither of them is, in any manner interested or concerned, and
128 & 129 in respect thereof can proceed as against this defendant to hearing and decree without the presence of any of said other defendants, wherefore the said petition is altogether multifarious. And this defendant denies all and all manner of unlawful agreements, combinations and confederacies wherewith it is by the said petition charged, without this that any other matter, cause or thing, in said petition contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
[SEAL.] By A. D. CHAMBERS, *Assistant Secretary.*

JOHN L. SEAGER,
Solicitor and Counsel of Defendant.

130 [*Answer Cent. R. R. Co. of N. J. Filed September* 13, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Impleaded with THE READING COMPANY and Others, Defendants.

The Separate Answer of the Central Railroad Company of New Jersey.

The Central Railroad Company of New Jersey answers the Petition herein as follows:

I.

As respects the allegations of the petition to it relating it admits:

(1) That it is a common carrier engaged in State and interstate transportation, and that it transports, among other commodities, anthracite coal from mines in Pennsylvania located on its lines to markets in that and other States.

(2) That in the year 1905 it transported about thirteen per cent. of the total tonnage of anthracite coal transported by rail in that year from anthracite coal mines in Pennsylvania to market; but it denies that such transportation was the result of any division of transportation between it and other carriers or otherwise; and
131 alleges that it resulted from the production during that year of mines located upon its lines.

(3) That it owns, and for upwards of thirty years last past has owned, about nine-tenths of the capital stock of the Lehigh and Wilkes-Barre Coal Company, a coal company whose mines are located upon its lines.

(4) That George F. Baer, who is also president of the Reading Company, the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company, is its president, and is also the president of the Lehigh and Wilkes-Barre Coal Company.

(5) That in the year 1892 it leased its railroad to the Port Reading Railroad Company, a corporation of the State of New Jersey, a majority of whose stock was owned by the Philadelphia and Reading Railroad Company, and that said lease was subsequently declared void by the Court of Chancery of New Jersey in the suit of Stockton, Attorney-General v. Central Railroad Co., et al., reported in the 50th New Jersey Equity Reports, 52, to which decision it refers as containing the reasons therefor. After that decision it resumed operation of its own road and has continued to operate it ever since.

(6) That the Reading Company in the year 1901 acquired a majority of its (the Central Company's) capital stock and is, and since

that time has been, the owner of a beneficial interest in 145,000 shares of its capital stock, which is registered in the name of the Pennsylvania Company for Insurance on Lives and Granting Annuities as Trustee under a mortgage given by the Reading Company to secure an issue of bonds of a par value of $23,000,000.

II.

As respects the allegations of the petition relating to the Lehigh and Wilkes-Barre Coal Company, it refers to the answer of the said Coal Company, which has been exhibited to it, hereby on
132 information and belief admitting all that is therein admitted, denying all that is therein denied, and alleging to be true all that is therein so alleged.

III.

As respects the allegations of the petition relating to the other defendants it has no knowledge or information sufficient to form a belief, and therefore denies each and every such allegation.

IV.

As respects the allegations of the petition relating to it other than those hereinbefore admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

(1) That it has directly or indirectly entered into any agreement, scheme, combination or conspiracy, by virtue of which it either alone or in combination with the other defendants or any of them acquired the power to control, regulate, restrain and monopolize, or by virtue of which it either alone or in such combination has controlled, regulated, restrained and monopolized either the production or transportation of anthracite coal from the mines in Pennsylvania to market points in other States or its price and sale in or throughout other States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced.

(2) That it has entered into any unlawful contracts, combinations or conspiracies as alleged in the petition, and particularly any such contracts, combinations and conspiracies which stifle competition, either between the defendant carriers or their agencies in the sale of anthracite coal, throughout the several States or between such defendant carriers or their agencies and the so-called "independent operators" or otherwise.

(3) That it operates parallel and competing lines of railroad with those of the Philadelphia and Reading Railway Com-
133 pany, or that by the acquisition of a majority of its stock by the Reading Company transportation between the several States previous to such acquisition carried on by it and the Philadelphia and Reading Railway Company was or could be monopolized in violation of the Act of July 2, 1890, or otherwise; or that at the times mentioned in the petition or ever since it pooled or divided anthracite coal traffic between itself and the other carriers defendant or any of them.

V.

For a further and separate answer it alleges:

(1) That it appears by the petition that this suit is brought against it and the other corporations named as defendants therein for distinct matters and causes, in several of which this defendant is not interested or concerned, and that the petition is therefore multifarious.

(2) That it appears by the petition that this suit is brought against it and the other corporations named as defendants therein for distinct matters and causes, in several whereof the other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of any of the other defendants, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it with costs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
[SEAL.] By G. V. WATERMAN, *Secretary.*

ROBERT W. DE FOREST,
Solicitor and of Counsel for The Central Railroad Company of New Jersey.

134 [*Answer Erie R. R. Co. Filed September* 9, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including ERIE RAILROAD COMPANY.

Separate Answer of Erie Railroad Company.

Erie Railroad Company for its separate answer herein, reserving unto itself all objections to the petition that appear upon the face thereof, and in particular the objection thereto that the same does not state facts sufficient to show any cause for citing this defend-
135 ant to appear in this Honorable Court, or to give this Court jurisdiction herein as to this defendant, does further answer as follows:

I.

This defendant is a corporation of the State of New York, duly organized under the laws of said State November 14th, 1895. Previous to such organization the principal part of the properties and railway lines of this defendant were in possession of receivers of the United States Circuit Court of the Southern District of New York,

such receivers having been appointed theretofore in suits pending in said Court to protect the rights and interests of creditors of this defendant's predecessor, a corporation of the State of New York, which corporation was known as the New York, Lake Erie and Western Railroad Company, and which was prior to the appointment of said receivers lawfully engaged in the business of a common carrier of passengers and freight in the States of New York, New Jersey, Pennsylvania and Ohio. Upon and after November 14th, 1895, this defendant duly acquired all the rights, franchises and properties of said New York, Lake Erie and Western Railroad Company and of capital stock of, and property of, or an interest in the property of numerous other corporations of like character, by virtue of the laws of the States of New York, New Jersey, Pennsylvania and Ohio, and by virtue of lawful deeds, contracts, mergers, consolidations, leases and like documents too numerous to be here specified, but which can be
136 exhibited to this Court herein. Thereby this defendant became a common carrier of passengers and freight in said States, and on the Great Lakes. Thereby this defendant lawfully acquired stock in other corporations, among the same being old corporations of the State of Pennsylvania that have existed since long before 1890, which corporations had, and have, the right to buy, sell and mine anthracite coal upon lands long owned or leased by said corporations in the State of Pennsylvania. Among such corporations of which this defendant lawfully came to own, and does now own, a majority of the capital stock subject to pledge as hereinafter stated, are the Hillside Coal and Iron Company and the Pennsylvania Coal Company. This defendant does carry to market the greater part of the coal bought or mined by such corporations because of its being the natural outlet for such mines, although a considerable part of the coal lands owned by such companies are not accessible to it, and therefore the coal produced from such lands is carried to market by other common carriers.

II.

The canal of the Lehigh Coal and Navigation Company connecting with tide water navigation at Philadelphia, and the Pennsylvania Railroad Company and the Baltimore & Ohio Railroad Company upon the south furnish water and rail connections for transportation of anthracite coal whereby the same can be transported to
137 New York, Philadelphia, Baltimore, Washington and all the great cities and towns using such coal in the east, south or west in this country. The Delaware and Hudson and the New York, Ontario & Western furnish rail connections to the great cities and towns of Canada, New York and New England, also to the Great Lakes, over which anthracite coal can be, and is, carried to many of the great cities and towns of the west that use such coal. The defendants do not control the only means of transportation of anthracite coal to markets or distributing points in Pennsylvania, or to markets or distributing points at tide water in New York or vicinity in that said canal and said railroads of the Pennsylvania, Baltimore & Ohio, Delaware & Hudson and New York, Ontario &

Western Companies, and their rail and water connections have carried, and do carry, anthracite coal to market and competition does exist in transportation rates thereon, and in wholesale prices for such coal. The defendants do not furnish and control without exception the sole means of transportation from the great majority of collieries to tide water, but in the mountainous regions of Pennsylvania wherein anthracite coal is found and mined, it is true that a colliery, or mine, is generally so situated that it is, and can be, served by only one railroad. There was no division of the total tonnage of anthracite coal between the railroad lines as alleged in 1905. Over one-fifth of the anthracite coal produced in 1905 was carried to market by three railroads, not parties defendant, and not even alleged to have violated the law in any way thereby, although in fact
138 the rates and methods of such railroads in handling such anthracite coal were substantially the same necessarily as those of this defendant. Originally all the anthracite coal produced was carried to market by teams and by water, and it is true that these agencies of transportation have been supplanted by railroads in such transportation because the railroads carry anthracite coal for independent operators and producers at rates so just and reasonable for the service performed that it was finally found more economical by the Lehigh Coal & Navigation Company to hire railroads to carry part of its coal to market than it was to carry the same to market in its own boats over its own canal and waters connected therewith while the Delaware and Hudson was finally compelled to build a railroad and to abandon its canal that it might continue to compete with the defendants in carrying to market and marketing the coal produced in its own mines.

III.

This defendant is a stranger to the matters alleged in the third paragraph of the petition except that it does own a majority of the stock in the Hillside Coal and Iron Company and the Pennsylvania Coal Company, subject to pledges referred to herein. This defendant has the right to own such stock and to own and manage such coal companies by virtue of the rights and franchises which it ac-
139 quired from the State of New York, and by virtue of the rights and franchises acquired by said coal companies from the State of Pennsylvania; and when such right of this defendant's predecessor so to own stock in such coal companies and to control the same was questioned in the courts of Pennsylvania, such right of this defendant's predecessor was upheld by said courts.

This defendant denies that it and such coal companies are, for all practical purposes, one and the same, or that the United States Supreme Court has recognized their identity.

IV.

Anthracite coal is not an article of prime necessity throughout the New England and Middle Atlantic States, and to a great extent in other sections of the country, but on the contrary, the same is a form of fuel used for domestic purposes because it is clean and quite free

from smoke. Wood, bituminous coal, and coke, are quite as good or better fuel, and large portions of this country, and most parts of the World, use such other fuels instead of anthracite coal. Long before 1890 the coal companies in which this defendant is a stockholder lawfully acquired large tracts of anthracite coal lands in the State of Pennsylvania, in accordance with the laws of that State, and began to mine and sell such coal, and since 1890, and down to the present time, such coal companies have continued to lawfully mine and sell such coal in the same manner, in accordance with the laws of Pennsylvania and the United States. It is true that there
140 are a large number of independent individual operators who mine anthracite coal upon their own properties, and also upon the properties of coal companies in which this defendant and others are interested as stockholders; such independent operators being engaged to mine such coal because in such instances the same cannot be so economically mined by the company owning or leasing the same, as by such other operators. The net profits upon the coal produced have been so cut down, by increased cost of mining such coal, because of increase in the cost of labor and materials used in such mining, that such net profit often is as low as five cents a ton upon millions of tons, or disappears entirely when large quantities of water and other like difficulties are encountered in the mine. Upon the other hand, when natural conditions are very favorable, where labor, materials and the cost of carrying to the same market are the same, the decreased amount of labor, explosives or pumping, required, may result in a net profit of twenty-five cents a ton; such a net profit, however, being unusual, and a net profit of ten cents a ton being as high as the profits in such mining will average. If this defendant and the other defendants had controlled, or could control the markets and could put prices up or down at will, and if this defendant was a party to an unlawful conspiracy to acquire a monopoly of such markets, and such conspirators had unlawfully acquired and enjoyed such monopoly for years, the average
141 net profits upon anthracite coal would have been, and would now be, larger than they are in fact. The independent operators do come into competition with coal companies in which this defendant is a stockholder, and do market anthracite coal produced by them in such markets as they choose; and so well are such markets chosen by such independent operators that they usually make ten or fifteen cents a ton more upon their anthracite coal than they could make thereon by selling the same in or near New York, because such New York market is the great surplus market of the country. There are no unlawful contracts, combinations or conspiracies that stifle competition in the New York market or elsewhere; but upon the contrary, anthracite coal has to compete with wood, coke and bituminous coal in such markets; and numerous independent operators compete with the so-called railroad coal companies in such markets.

V.

New York Harbor is not the principal distributing point for anthracite coal, and the market price of anthracite coal in the several States cannot be controlled by fixing the market price in New York.

VI.

This defendant is an utter stranger to the matters alleged in Paragraph VI of the petition, but, as this defendant was not incorporated until November 14th, 1895, it alleges that what was done in
142 January, 1892, if anything, was done as alleged by the Philadelphia and Reading Railway and other railroads named in said paragraph, and the same and the resulting litigations and decisions, are irrelevant as to this defendant and this suit.

VII.

This defendant denies that the average price of anthracite coal at tide rose or declined from 1890 to 1895 as alleged, or that the cancellation of said leases restored competition and caused anthracite coal prices to again decline in 1894 and 1895. On the contrary, this defendant alleges that for several years preceding the summer of 1893 this country was exceedingly prosperous and prices of labor, material and fuel generally were constantly rising, although such prices did not generally become as high as they have become during the last three or four years. In the summer of 1893, however, this country had one of the worst panics it has ever known. Laborers were often unable to find employment at all, or only at prices very low, and the products of labor, including anthracite coal, often became unsalable except at prices so low that often they did not return the producer enough to pay for the raw material and labor that had entered into the product. This defendant expressly denies that in 1894 or in 1895 to November 14th, when it had no existence, it entered into an agreement, scheme, combination or conspiracy to control, regulate, restrain or monopolize the production of an-
143 thracite coal, or that after this defendant was incorporated November 14th, 1895, it at any time entered into any agreement, scheme, combination or conspiracy for the like purpose, or to control, regulate, restrain or monopolize the transportation of anthracite coal, or that it resulted that competition in the transportation and sale of anthracite coal was wholly suppressed and the price thereof to consumers generally was thereby enhanced, or that this defendant thus violated the Act of Congress to protect trade and commerce against unlawful monopolies.

(*a*) This defendant denies that it entered into or now maintains an agreement, combination or conspiracy in violation of the Act aforesaid to use its power to obtain control of the sale and disposition of the output of independent mines in the markets of the several States, and in particular of the market of New York Harbor. The contract Exhibit "A" annexed to the complaint is not used by all independent operators, nor is it always used by the coal companies in which this defendant is a stockholder when contracts are being entered into for the production and sale of anthracite coal. But such contract, or contracts similar thereto, are often entered into in making contracts to buy anthracite coal because the mining of anthracite coal is a very hazardous business requiring large capital, the purchase of great quantities of timber and other materials, to prop and brace

the tunnels in the mines, and the employment of large num-
144 bers of skilled and unskilled laborers to sink shafts, follow veins, dig tunnels, and remove the anthracite coal. Expensive and powerful pumps are required to free the mines from water, railroads are required to carry the coal, sometimes miles, through tunnels to reach shafts where it can be hoisted to the surface by expensive machinery. Breakers containing expensive and complicated machinery, often costing $150,000 for a single mine, are also required to prepare anthracite coal for the market. From $500,000 to more than $1,000,000 is usually required to open an anthracite coal mine and put it in condition for operation. Generally before an independent operator who has so much capital will put it into so hazardous an enterprise he makes written contracts covering the entire operation until completion or for a long term of years, that he may know that he will get for his product a price proportionate to the average market price in a large free market where there is the most stable demand for his product. Thus it has come about since the anthracite coal business began to develop in 1820 that there has been a gradual evolution of such contract, and a survival of the form best fitted to the mutual needs of operator and the buyer of his product. At one time such operators received only 40% of the average New York market price for their product at the breaker's mouth in Pennsylvania, but the usual percentage of the New York price for which the independent operators would sell coal was gradually raised to 45%, then 50%, then 55%, then 60%,
145 and finally about 1900, after it is alleged the unlawful conspiracy had been formed and was in full control of the New York market so that the independent operator could no longer reach it or sell coal therein, competition between buyers, reasonable and just rates, and efficient railroad transportation enabled the independent operators to force the buyers to raise the amount paid the independent operator to 65% of the average New York selling price for prepared sizes above pea to meet increased cost of mining and preparing the coal, particularly for the cost of wages of labor, whereas, had an unlawful conspiracy had control of the market as alleged, with the power to prevent competition, such price to the independent operator would not have been thus raised.

This defendant denies that said contracts were entered into pursuant to a previous agreement as to uniform provisions, or that the substance of such contracts are correctly alleged.

This defendant denies that the independent operator who entered into such contracts thereby realized fifteen or twenty cents more per ton approximately, depending upon the length of haul, than was realized by the independent operator who shipped coal to tide-water upon his own account paying the published rate of transportation. On the contrary, the price fixed for such coal was the average monthly price of prepared sizes of anthracite coal at New York tide-water, although not over ten per cent. of such coal is sold at New York tide-water, and such price varies each month,
146 while the transportation rates thereon were substantially fixed as the result of an investigation as to such rates by the

Interstate Commerce Commission more than ten years ago, and such rates have since remained substantially the same, except some slight decreases therein. The independent operators who do not sell by such contracts have the risk and labor of finding their own market, and usually sell in markets outside New York Harbor, and do so because the New York market is the market for the surplus coal, and such independent operators can usually make 15 or 20 cents more per ton by selling their coal in such other markets instead of selling it in New York Harbor or selling it in bulk under a contract similar to that annexed to the petition as Exhibit "A." From choice, a large number of independent operators upon the line of this defendant and other railroads have not entered into such contracts as Exhibit "A" for the sale of their coal. The coal corporations in which this defendant is a stockholder buy such coal to make a profit upon its sale, and have a legal right so to do by the laws of Pennsylvania. Such contracts are not devices to stifle competition, but are contracts for the sale of coal at the breaker's mouth in the State of Pennsylvania, lawfully under the laws of such State, and not subject to, or in violation of, the Constitution and laws of the United States.

That the stock of the Hillside Coal and Iron Company held by the defendant is pledged to secure the payment of bonds
147 of this defendant to the amount of $175,000,000, the greater part of which have been issued, sold and delivered, under a mortgage dated December 10th, 1895, from this defendant to The Farmers Loan and Trust Company, a corporation of the State of New York, Trustee, and subject to such pledge is also pledged to secure the payment of bonds of this defendant to the amount of $50,000,000, of which bonds to the amount of $21,015,000 have been issued, sold and delivered, under a mortgage dated April 1st, 1903, from this defendant to The Standard Trust Company of New York, Trustee, a corporation of the State of New York.

That the stock of the Pennsylvania Coal Company owned by this defendant is pledged to secure the payment of bonds of this defendant to the amount of $36,000,000, the greater part of which have been issued, sold and delivered, under an indenture dated February 1st, 1901, from the defendant to The Mercantile Trust Company, Trustee, a corporation of the State of New York, and subject to such pledge is also pledged under the said mortgage, dated April 1st, 1903, from this defendant to The Standard Trust Company of New York, Trustee.

That such trustees should be parties hereto that the interest of the holders of such bonds may not be impaired by an adjudication of this Court without such bondholders or their Trustees having a day in court.

(*b*) This defendant denies that it entered into an agree-
148 ment or combination, violating the Act of Congress of July 2, 1890, whereby it acquired the stock of The New York, Susquehanna and Western Railroad Company, a competing line of railroad, and that it thus prevented competition in the transportation of anthracite coal, or monopolized its transportation. This

defendant lawfully acquired part of the stock in The New York, Susquehanna and Western Railroad Company from the owners and holders thereof, under and pursuant to the right and authority granted by the laws of the States of New York, New Jersey and Pennsylvania, and by this defendant's certificate of incorporation, because they wished to sell it, and the business interests of this defendant would be promoted thereby. The New York, Susquehanna and Western Railroad Company was a small railroad, was in no true sense a competitor of this defendant, and such purchase of stock by this defendant has not resulted in higher rates, or in decreased service by said The New York, Susquehanna and Western Railroad Company to independent operators, or other shippers, over its lines.

This defendant is one of the greatest carriers of Western produce, while The New York, Susquehanna and Western Railroad Company has no such traffic. This defendant has also a large westbound traffic, while The New York, Susquehanna and Western Railroad obtains westbound through traffic only through its ability to forward such traffic over the lines of this defendant or some other con-
149 necting carrier. Both of said defendants are carriers of milk and of anthracite coal to New York, but the sources of supply of both of these commodities were such that the traffic reached by one railroad could not be reached by the other. This defendant carries both bituminous and anthracite coal largely and carries them West as well as East, while The New York, Susquehanna and Western Railroad Company carries little coal except anthracite eastbound. These railroads, therefore, are not competitors, but the control of a majority of the stock of The New York, Susquehanna and Western Railroad by this defendant is advantageous to both for a number of reasons.

The Erie Railroad Company has a large and growing freight and passenger business and its terminal facilities in New York Harbor are inadequate. They consist of a double track tunnel through which most of its traffic must pass and which is often overcrowded, and two main yards, one of which is already often inadequate and the capacity of the other of which will soon become filled if the present rate of growth of business continues. The terminal facilities on the New Jersey side of the New York Harbor are largely taken up for Railroad purposes, and additional facilities are very difficult to obtain. The New York, Susquehanna and Western Railroad Company has a double track tunnel and a yard on the Hudson River which furnishes facilities in excess of its traffic, and the tunnel and yard are located so as to reach by rail important industries on New York Harbor which are not accessible to the tracks of
150 this defendant. The acquisition of the stock of The New York, Susquehanna & Western Railroad Company enables this defendant to use the tunnel and yard of that Company and to divert traffic thereto without loss to the stockholders of this defendant, and the control of that terminal is a reasonable provision for the future terminal demands of this defendant.

Through the tunnel of The New York, Susquehanna & Western

Railroad Company, access is gained by rail to several miles of the Hudson River water front on New York Harbor, which is not accessible by rail to this defendant. There are now numerous large industries located along this water front reached by the rails owned or controlled by The New York, Susquehanna & Western Railroad Company, and a large amount of freight traffic is delivered to and received from these industries, the principal part of which is shipped from or destined to points in the West along the lines of this defendant or its connections, and not on the lines of The New York, Susquehanna and Western Railroad Company. Such traffic is obtained by this defendant from The New York, Susquehanna and Western Railroad Company in large quantities and the control of the stock of The New York, Susquehanna & Western Railroad Company ensures advantageous working traffic arrangements with respect to such traffic, and participation therein, to this defendant. Additional industries are rapidly being established along the Hudson
151 River water front accessible through The New York, Susquehanna & Western Railroad Company's tunnel, and access to such water front for through traffic moving over this Company's rails is of great importance to this defendant and such access upon reasonable terms is assured by control of the stock of The New York, Susquehanna & Western Railroad Company.

These are among the business reasons which led to the acquisition by this Company of a majority of the stock of said The New York, Susquehanna & Western Railroad Company, and the said stock was not acquired with a view to monopolize the transportation of, or the trade in coal.

(*c*) This defendant is an utter stranger to the matters alleged as to the Reading Company and its transaction of January, 1901, with railroad companies other than this defendant, and, if said transactions are in any way relevant hereto, as this defendant alleges they are not, the strict proof of such transactions should be made herein.

(*d*) This defendant denies that the allegations of this subdivision of paragraph VII is a correct statement of the facts therein alleged. It further denies that it entered into an agreement, combination or conspiracy in violation of the Act of Congress of July 2, 1890, to prevent the completion of a projected independent and competing
152 railroad by diverting and drawing away from it the support and influence of its principal promoters, or that at the same time, by such agreement, combination or conspiracy, there was pooled and divided between this defendant and the other defendants named 1,500,000 tons of anthracite coal annually more or less, moved from the collieries theretofore owned by the firm of Simpson & Watkins to market points and other States. In substance, the facts with reference to the aforesaid transactions are as follows:

In 1899, Simpson & Watkins owned the stock in several anthracite coal mines and the controlling interests in partnership owning such a mine. They also owned two land corporations and an electric light corporation somewhat connected with the business of such coal mines. Said coal mines were then producing about 1,000,000 tons

of anthracite coal per year. Such coal mines were severally located upon the lines of this defendant and other railroads, and such railroad lines carried the coal produced therein to market. All such coal was sold at the breaker's mouth to purchasers thereof in the State of Pennsylvania under coal purchase contracts generally similar to the contract annexed to the petition. Simpson & Watkins offered such mines for sale, and, for business reasons of advantage to it, this defendant became a party to negotiations for their purchase. This defendant caused such mines to be examined by an expert, and thereby learned that they contained substantially 45,000,000 tons of mineable coal that could be produced at the rate of 1,000,-
000 tons per year or more, and other like facts from which it
153 appeared that said mines were offered for sale at a price that would make the purchase of the stock of the corporations owning such mines a good investment. Accordingly the Temple Iron Company, a Pennsylvania corporation organized prior to 1874, and having the power to buy said mines and to mine or sell coal, issued its capital stock and bonds in accordance with the laws of Pennsylvania, and therewith purchased the interest of Simpson & Watkins in said mines. The bonds of the Temple Iron Company amounting to $3,500,000 were pledged to the Guaranty Trust Company of New York for $3,238,396.66, cash advanced therefor by such Trust Company wherewith to pay Simpson & Watkins' part of the purchase price for their interest in such mines. Thereupon this defendant contracted to purchase 5.84 per cent. of $2,260,000 of the stock of said Temple Iron Company, which stock had also been pledged to said Guaranty Trust Company for such loan by it wherewith to purchase the interest of Simpson & Watkins in said mines. This defendant has since acquired such stock, to wit: 1457 shares of stock of the Temple Iron Company, in accordance with its contract; but the said Guaranty Trust Company is still the trustee of the mortgage which secures the payment of the bonds which have been purchased by numerous bondholders, whose rights should not be impaired herein without bringing them or their trustee into his
court as a party defendant. One of said mines is located upon
154 the New York, Ontario & Western Railway Company, which still carries its output to market. Said mines are not located upon the Philadelphia & Reading Railway; but the iron furnaces of the Temple Iron Company are located upon the lines of said railway, which derives a large and valuable traffic therefrom. The coal mined in such mines was not and is not controlled or regulated by an agreement, contract or combination contrary to law. On the contrary, such coal was transported to market for the owners thereof, and the owners thereof purchased the same in the State of Pennsylvania under pre-existing contracts as aforesaid. Some of such contracts have been modified in some respects, but such contracts have been otherwise performed as made. The output of each mine so purchased is sold in the State of Pennsylvania under 65 per cent. contracts, the title thereto passing at the breaker's mouth in said State, and the purchase of stock in the Temple Iron Company and the coal so mined in such mines is governed by the laws of Penn-

sylvania, and the Act of Congress aforesaid has been in nowise violated in the aforesaid transaction.

Said stock of the Temple Iron Company, and said mining interests of Simpson & Watkins, were not acquired to throttle competition in the transportation and sale of anthracite coal, nor did the carrier defendants by concerted action pool the tonnage of said mines, or divide the same among themselves. On the contrary such tonnage had natural outlets to market over the various lines before
155 such transactions, and after such transactions said mines necessarily still continued to deliver their products to the buyers at the breaker's mouth under contracts therefor, and the buyers continued to send such products to market by the railroad that was the natural outlet for the particular mine involved.

(*e*) Under the laws of the State of New York, under which this defendant was organized, this defendant, and one or more of its predecessors organized under the laws of the same State, have had the right to acquire and hold stock in other corporations, and in particular, to acquire stock in coal corporations because of the large amount of coal this defendant necessarily annually consumes in its engines. This defendant did lawfully exercise such power by buying a large part of the stock of the Pennsylvania Coal Company from the owners thereof.

The stock of such coal company, and of the Erie and Wyoming Valley Railroad Company, and of the Delaware Valley and Kingston Railroad Company was lawfully purchased, of the owners thereof, because experts in the value thereof advised this defendant that the purchase thereof at the prices at which the same were respectively offered and purchased would prove profitable and advantageous to this defendant, in that it would thereby secure much needed additional railroad facilities in the anthracite coal region, and would be enabled to carry a large and permanent freight traffic to market for many years. This defendant admits that it opposed
156 the building of the proposed Delaware Valley and Kingston Railroad before the Railroad Commissioners of the State of New York, and in the Supreme Court of said State; but this defendant alleges that by the law of the State of New York, it had the lawful right to make such opposition, in that such State recognizes that too many railroads may be detrimental to shippers and consumers alike, and such opposition was not, and is not, a violation of any Act of Congress.

This defendant expressly denies that any of said stocks were purchased at an exorbitant price, or that any of them were purchased pursuant to an unlawful combination in violation of any Act of Congress, or that the purchase thereof prevented competition in the transportation of anthracite coal.

VIII.

And this defendant for further answer, says, that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for distinct matters and causes, in several whereof, as appears by said petition,

this defendant is not in any manner interested or concerned, and that the petition is therefore altogether multifarious; and that it appears by said petition that the same is exhibited against this defendant and the several other corporations named therein as defendants, in several whereof, as appears by said petition, the said other defendants are not, and neither of them is interested
157 or concerned, in respect whereof this suit can proceed to hearing and decree without the presence of any of the other defendants, wherefore the said petition is also multifarious. And this defendant denies all manner of unlawful agreement, combination and confederacy wherewith it is by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true, to the knowledge and belief of this defendant. All of which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be dismissed with costs.

ERIE RAILROAD COMPANY,
[SEAL.] By DAVID BOSMAN, *Secretary.*

GEO. F. BROWNELL,
Solicitor and Counsel of Defendant.

158 [*Answer, N. Y., S. & W. R. R. Co., Filed September* 9, 1907.]

United States Circuit Court, Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

The Separate Answer of The New York, Susquehanna and Western Railroad Company, One of the Defendants.

I. This defendant admits that it is a common carrier, and that it is engaged in interstate transportation, including the transportation of anthracite coal, from a point near Stroudsburg, in the State of Pennsylvania, to the markets of that and other States, which coal is brought to this point from mines in the State of Pennsylvania.

II. The defendant denies the allegations of Paragraph 2 of the plaintiff's petition that the defendant carriers, and the Penn-
159 sylvania Railroad Company, and the New York, Ontario and Western Railroad Company, operate the only lines of railroad carrying anthracite coal to tide water points in Pennsylvania and other States, and denies that they furnish and control the only means of transporting such coal to the markets and distributing points specified in the petition. It denies that there has been any

division of traffic between this defendant and other carriers; it denies that this defendant is a competitor with the other defendant carriers in the transportation of coal to market from any of the mines on the lines of this defendant, or from any of the mines on the lines of the other defendants.

III. This defendant, not admitting that it is without lawful power under the Constitution and Laws of the State of Pennsylvania to operate coal mines, denies that it does operate coal mines, and denies that it buys, sells, or otherwise deals in coal for profit, either directly or indirectly through the means and instrumentality of the defendant Coal Company. This defendant has no knowledge as to the ownership of stock of the various Companies in said paragraph mentioned, except that of the New York, Susquehanna and Western Coal Company, a majority of which is owned by this defendant, and this defendant denies that it is identical with the said Coal Company.

IV. This defendant is not informed whether the facts stated as to the extent of the coal region, and the extent of the owner-
160 ship thereof by the various companies, is correct. It denies that anthracite coal is an article of prime necessity for fuel in New England and the Middle Atlantic States, or elsewhere, and says that it has no knowledge of the extent of the supply of coal by individuals, firms, and corporations, other than those who are defendants to the bill, and this defendant denies that it has entered into any contracts, combinations, or conspiracies to stifle competition either with the defendants or between the defendants and other miners, operators or carriers.

V. This defendant has no knowledge as to the extent of the transportation of coal to New York Harbor for distribution there, but believes that it is not true that the greater part of the output not consumed in the State of Pennsylvania is distributed from that point, and has no knowledge whether the prices in New York market fix the prices in other markets.

VI. This defendant has no knowledge of the proposed consolidation set forth in Paragraph VI of the petition between the Lehigh Valley Railroad and other railroads, or of the leases therein proposed, or of the litigation relating thereto.

VII. This defendant denies that the alterations in prices of coal in New York since the year 1890 have been caused by any competition or combination of the defendants, or any of them, and
161 deny that in the year 1895, or at any other time, this defendant entered into any agreement, or scheme, or combination, or conspiracy, whereby they acquired, or intended to acquire, power to control or regulate, or restrain, or monopolize either the production or transportation or sale of coal, or its price, and denies that competition in the production or sale of anthracite coal has been suppressed, and denies that the prices thereof have been by any such means enhanced.

(VII*a*). And as to the matters set forth in Paragraph VII*a*, of the petition defendant says that this defendant was organized in the year 1881 by the consolidation of several Railroad Companies,

the most important of which was the Midland Railroad of New Jersey, successor of the New Jersey Midland Railroad Company, which had been recently in the hands of a receiver. The Company thus formed was weak and unprofitable. In order to secure traffic prior to 1893, the Company made continuing contracts with several mine owners to take all their coal at the mouth of the shaft. The coal became the absolute property of this defendant upon delivery at the breaker in the State of Pennsylvania, and this defendant used part of it for its locomotives and other uses, and carried part of it over its own and other lines to New York market and other markets, and sold it there. The miner and seller had no interest in the transportation or sale of the coal, and the price was for the
162 most part fixed at a percentage of the market price of that or similar coal at the time of sale. This defendant assigned all its contracts for the purchase of coal to the New York, Susquehanna & Western Coal Company in the year 1893, and since that year this defendant has had no dealings in coal except for its own use.

This defendant denies that any of the contracts made by it were intended to prevent competition, or to fix prices, and says that the purpose of its contracts was to procure profitable traffic for its railroad, and coal for its own use at fair prices.

(VII*b*). As to the matters set forth in Paragraph VII*b*, this defendant denies that it and the Erie Railroad Company are competitive lines for the transportation of coal, and denies that this defendant's line is competitive with that of any of the other defendant carriers. In the year 1898 the Erie Railroad Company acquired the majority of the shares of the stock of this defendant by transactions not with this defendant but transactions with the stockholders thereof, which transactions by the Erie Railroad Company were authorized by the Laws of the State of New York under which it was incorporated. This defendant denies that by said transactions any competition between said Railroad Companies was intended to be, or was in fact prevented or interfered with, and denies that the price of coal was controlled in any manner. The purchases whereby the Erie Railroad Company acquired a majority of the capital
163 stock of this defendant were lawful transactions and were sales and purchases made within the State, and were not in restraint of interstate trade, or in violation of any Act of Congress. At the time of the said purchase of stock by the Erie Railroad Company the lines of said Company were many miles distant from any of the territory in the coal regions served by this defendant. Since that time, by traffic arrangements with the Erie & Wyoming Valley Railroad Company the Erie Railroad Company has reached some mines in the territory previously reached by the lines of this defendant, but the two Companies have continued to connect with and carry coal from different mines except that this defendant has received traffic which previously was carried over the lines of the Erie Railroad Company, this Company receiving such coal because it can more conveniently deliver to or for purchasers.

(VII*c*). This defendant has no knowledge as to the matters set forth in Paragraph VII*c* of the petition.

(VII*d*). As to the matters set forth in Paragraph VII*d*, this defendant denies any agreement, combination or conspiracy as set forth in said paragraph, and denies that there was pooled and divided between this defendant and the other defendants named the coal moved from the collieries theretofore owned by the firm of Simpson & Watkins. In 1899 Simpson & Watkins owned the
164 stock in several companies controlling anthracite coal mines, and the controlling interest in a partnership owning such a mine, and also other property. These coal mines were severally located on the lines of this defendant and other railroad lines, and all such coal was sold at the breaker's mouth, to the purchasers thereof, in the State of Pennsylvania under coal purchase contracts, similar to that a copy of which is annexed to the petition. The Temple Iron Company, a Pennsylvania corporation organized prior to 1874, and having power to mine or sell coal, issued its capital stock and bonds in accordance with the Laws of Pennsylvania, and therewith purchased the interest of Simpson & Watkins in said mines subject to the said contracts for sale of the coal therein; the bonds of said Iron Company amounting to $3,500,000 were pledged to the Guaranty Trust Company of New York for $3,238,396.66, cash advanced therefor by the Trust Company wherewith to pay to Simpson & Watkins part of the price. Thereupon this defendant contracted to purchase 4.86 per cent. of stock of the Temple Iron Company amounting to $2,260,000, which stock was also pledged to said Guaranty Trust Company for such loan. This defendant has since acquired its percentage of said stock in accordance with the contract, but the Guaranty Trust Company is still the Trustee under the mortgage which secures the bonds held by numerous bondholders. One of said mines is located on the New York, Ontario & Western Railway, which still carries its coal
165 to market. The coal in the said mines was not, and is not, controlled by any combination. Said coal was brought to market for the owners thereof, and the owners thereof purchased the same in the State of Pennsylvania under pre-existing contracts as aforesaid. Some of these contracts have been modified in some respects, but they have been performed substantially as originally made. The coal from each of these mines is sold in the State of Pennsylvania under sixty-five per cent. contracts, and the title thereto passes at the breaker in said State, and the purchase of stock of the Temple Iron Company, and of the coal so mined, is governed by the Laws of the State, and the said Act of Congress has been in nowise violated in the transaction, and this defendant is not a party to or interested in any contract for the sale of coal from said mines.

(VII*e*). This defendant has no knowledge of the matters set forth in Paragraph VII*e* of the petition.

VIII. And this defendant, for a further answer, says that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for

distinct matters and causes in several whereof as appears by said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore altogether multifarious; and that it appears by said petition that the said matters are exhibied against this defendant and the several other corporations named
165 & 167 therein as defendants, in several whereof, as appears by said petition, the said other defendants are not, and neither of them is interested or concerned, in respect whereof this suit can proceed to hearing and decree without the presence of any of the other defendants, wherefore the said petition is also multifarious. And this defendant denies all manner of unlawful agreement, combination and confederacy wherewith it is by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true, to the knowledge and belief of this defendant. All of which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be dismissed, with costs.

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

[SEAL.] By J. E. PACKER, *Assistant Secretary.*

COLLINS & CORBIN,
Solicitors and Counsel for Defendant.

168 [*Answer, P. & R. C. & I. Co. Filed August* 31, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff.
vs.
THE READING COMPANY and Others, Defendants.

The Separate Answer of the Philadelphia and Reading Coal and Iron Company, One of the Defendants Herein.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petition contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

169 I.

This defendant admits it owns and operates anthracite coal mines in the State of Pennsylvania, and buys, sells and otherwise deals in

anthracite coal in the State of Pennsylvania, but it denies that it does so in the markets of the several States. It admits that it is true that it sells anthracite coal in several of the States of the United States, all of which said transactions this defendant avers are done and conducted pursuant to and in accordance with its charter powers and the laws of the several States and Commonwealths wherein its said business is conducted and transacted. It avers that all the mines operated by it are located on the lines of railroad of the defendant, the Philadelphia and Reading Railway Company, in the State of Pennsylvania.

It is a stranger to all and singular the matters and things set forth in Paragraph I of Plaintiff's petition, respecting all the other parties defendants herein, save that it admits that the defendant, Reading Company, is the owner of an equitable interest, subject to certain liens and pledges not material, as this defendant is advised by Counsel, to be particularly mentioned herein, of the major portion of the shares of the capital stock of this defendant.

II.

For answer to the allegations contained in Paragraph II of Plaintiff's petition, this defendant says:

That its mines or collieries are wholly located on the lines of railroad and branches of the Philadelphia and Reading Railway Company. It denies that, in the absence of the supposed and alleged unlawful contracts in the said petition afterwards charged and described, or by any other means, howsoever, the said defendant carriers would have been, or would or could become, either active competitors or competitors in any form whatsoever, in the transportation of anthracite coal from the mines to tide-water or to any other markets whatsoever. It denies that any of the
170 other of the said defendant carriers is, or can or could become, a competitor, with the Philadelphia and Reading Railway Company for the transportation of anthracite coal from the mines of this defendant to the said markets or any other market.

This defendant avers that neither of the said defendant carriers, save the Philadelphia and Reading Railway Company, has any line of railroad, branch or other form of railroad track connecting with any of the mines or collieries of this defendant to any market whatsoever.

It avers that, in respect of the anthracite coal produced and to be produced at the various mines or collieries of this defendant, the said Philadelphia and Reading Railway Company has possessed and does possess the sole and only means of transportation of the products thereof by railroad to or toward their markets, and that it has no knowledge of and concerning the situation of the lines of railroad of the said other defendant carriers in respect of the mines and collieries located on their several lines of railroad and branches.

This defendant denies that in the year 1905 or at any other time or period the total tonnage, or any other portion or fraction, of the coal transported from its mines was divided among the several railroads in the proportions set forth in the said paragraph

as alleged therein, or in any other proportions whatsoever; on the contrary, this defendant avers that no part or portion whatsoever of the tonnage produced at its mines or collieries was then, before or since, ever divided or apportioned in any form or manner whatsoever with any other carrier by the said Philadelphia and Reading Railway Company, and that at all times, up to the filing of this answer, the entire tonnage produced at the mines and collieries of this defendant was taken and carried on and over the lines of the said Philadelphia and Reading Railway Company, ever since its organization in 1896, to the destination thereof when reached by said lines, and toward the destination thereof when reached by the railroads of other carriers or by means of water transportation.

171 III.

Answering the matters and things alleged and set forth in Paragraph III of the Plaintiff's petition, this defendant denies that it hath any knowledge of or concerning the rights, powers or privileges of the said defendant, the Delaware, Lackawanna and Western Railroad Company, or of the rights, powers and privileges of the remaining defendants save its own. It denies that Reading Company, either as alleged in the said Petition or otherwise, whether by virtue of its said equitable or beneficial interest in the share capital of this defendant or in any otherwise, holds, possesses or exercises, either directly or indirectly, any right, power or authority to operate the coal mines of this defendant, or to buy, sell or otherwise deal in coal produced or purchased by this defendant for profit, or otherwise, or holds, possesses or exercises any right or power in the premises, saving only the right of the said Reading Company, in virtue of its interest in the shares of the capital stock of this defendant to direct the voting on the said shares, at meetings of the shareholders of this defendant.

It denies that it hath any knowledge whatsoever of or concerning the said several other defendants, or their relations to each other or the legal or other effect thereof.

It denies that being a coal company as aforesaid it is one and the same thing or otherwise identical, in any legal, practical or other sense, with the said Philadelphia and Reading Railway Company over whose lines of railroad its products have been, are being, and will be transported, or with the said Reading Company, or any other of the said defendants, but avers that it is wholly a separate and independent corporation, conducting its own business, pursuant to its own charter powers free from the control of any other corporation whatsoever, saving the right of its shareholders to vote or to direct the vote upon their respective shares at the meetings of its shareholders.

172 IV.

This defendant, for answer to the several matters and things alleged and set forth in Paragraph IV of the Plaintiff's petition, says that it denies that anthracite coal is an article of prime neces-

sity anywhere, or that it is universally used for domestic purposes throughout the New England and Atlantic States or elsewhere, or to any great extent in the other sections of the country, save in a few of the larger cities and towns situated in some parts thereof, and further says that, if the said allegations are in anywise pertinent or material to be inquired of and determined in this suit, it demands strict proof thereof.

This defendant, for lack of exact information, is willing to admit that it is true, as alleged, that the entire source of supply of anthracite coal is located within the State of Pennsylvania, and that the deposits extend to and are included within the districts of the said State substantially as described in and set forth in the Plaintiff's petition, but it has no knowledge of the said matters and things, saving and excepting of those which include and relate to the property and estate of this defendant, and further says that, if the said allegations are in anywise pertinent or material to be inquired of and determined in this suit, it demands strict proof thereof.

This defendant further denies that it has any knowledge whatsoever of the dimensions, quantity or quality of the so-called area of unmined anthracite coal mentioned in the said paragraph of the Plaintiff's petition, or of the proportions thereof owned by each or any of the supposed owners thereof, and further says that, if the said allegations are in anywise material or pertinent to be inquired of and determined herein, it demands strict proof thereof.

This defendant denies that the said Reading Company, either through its said equitable or beneficial interest in the share capital of this defendant or otherwise, or any other of the said defendants, or any other company or person, owns or controls, or has ever exercised or attempted to exercise the ownership or control, of any portion of the estate and property of this defendant, whether of the said unmined area or otherwise, saving the right of the
173 said Reading Company to vote or to direct the vote on the shares in which it has an interest at meetings of shareholders of this defendant as aforesaid.

This defendant denies that either the said Reading Company or the said Philadelphia and Reading Railway Company, has at any time, directly or indirectly, or in any manner or by any means whatsoever, produced any part of the annual supply of anthracite coal produced or furnished by this defendant.

This defendant denies that it has any knowledge whatsoever of and concerning the so-called independent or individual operators (as it is said in the said petition these individual firms and corporations are called) who mine anthracite coal either from their own properties or from properties leased by them, save and except in respect of the individuals, firms and corporations, who and which are the lessees of this defendant; nor does this defendant have any knowledge of the proportion of the coal, either actual or approximate, which the last named individuals, firms or corporations produce, in respect to the whole production of the annual supply of anthracite. Further, this defendant denies that it has any knowledge of, or is otherwise aware of or acquainted with, the existence of any great

distributing center in which the said above mentioned independent individuals, firms and corporations could or would come in competition with this defendant in the sale of its coal, whether affected by the said alleged unlawful contracts, combinations and conspiracies or in any otherwise, saving only that in any place whatsoever and wherever this defendant offers coal for sale, it is in competition with every other producer or seller of coal, whether individual or corporate who or which can and does offer coal for sale at the same time and place.

This defendant denies that it ever at any time or place or under any circumstances whatsoever entered into, became a party to, or participated in anywise whatsoever in, any of the supposed and alleged unlawful contracts, combinations, or conspiracies indefinitely and with utter lack of particularity, alleged, asserted and charged in the Plaintiff's petition.

174 V.

For answer to the allegations set forth and contained in Paragraph V of the Plaintiff's petition, this defendant says that it denies that it has any knowledge of the practice or experience of other operators or producers in respect of the said matters and things, but in respect of the conduct of its own business, it denies that its surplus of anthracite—that is, that part of its output not consumed in Pennsylvania—is carried chiefly to tidewater at New York Harbor, or is thence distributed by water and by railroad or otherwise to points in the New England and Middle Atlantic States, and avers that only a comparatively small proportion (about ten per cent.) of the coal produced or purchased by this defendant is carried thereto. It denies that New York Harbor is the principal distributing point for anthracite coal produced by this defendant, or a distributing point at all, save in respect of occasional and insignificant shipments. And for further answer in this behalf, this defendant avers that it understands and believes that "New York Harbor" so-called, as known in the trade, includes the various estuaries affected by the tides and their shores on either side, in the vicinity of the City of New York, that is to say; the several coasts of the State of New Jersey in the said vicinity, those of Staten Island and of the eastern portion of the island of Long Island, as well as those portions of the shores and coasts of that part of the City of New York called the Boroughs of Manhattan and Bronx; that this defendant is informed through published statistics and believes, that the said territory so described as "New York Harbor," on account of its great population and manifold industries, consumes yearly, and furnishes a market for, a greater quantity of anthracite coal than any other point or place of the same or equal geographical extent or dimensions; that all of the operators or producers of anthracite coal, by means of the facilities for transportation afforded and furnished by the various railroads and the said waters, have access to all parts of the said territory. And this defendant further avers that the prices it
175 demands and receives from time to time for anthracite coal sold by it in the said territory, are for delivery on board ves-

sels at the wharves and docks of the railroad carrier, and do not include the marine freight or service of carriage thereof to the actual and ultimate destination in said waters of New York Harbor or to points beyond, and that its said prices are fixed and determined by it from time to time generally, and without reference or regard to the ultimate or actual destination of the commodity.

VI.

This defendant, answering the vague, indefinite, impertinent, uncertain and scandalous charges and allegations and statements set forth and alleged in paragraph VII of the Plaintiff's petition, waiving exception thereto, for their obvious scandal and impertinence, denies that it ever, from any motive or consideration whatsoever, either such as are alleged and recited in the said paragraph, or any other motive or consideration whatsoever, whether in concert with the said other defendants, or any of them, or with any other person, firm or corporation, or that it in any otherwise howsoever, entered into any agreement, scheme, combination or conspiracy, for any purpose or with any result whatsoever, whether to acquire the power to control, regulate, restrain or monopolize the production or sale of anthracite coal or its transportation or otherwise, as indefinitely, with utter lack of particular statement or averment, asserted and charged in the petition.

And this defendant further answering says that it denies that, as alleged in item (*a*) of said paragraph, whether in order to prevent the output of the so-called independent mines from being sold throughout the several States in competition with the output from its own mines and those of its subsidiary companies or for any other purpose, ever entered into or now maintains an agreement, combination or conspiracy, with the said other defendants or any of them, or with any other person or persons whomsoever to use the power of the carrier companies, or any of them, to obtain control of
176 the disposition of the aforesaid output of the independent mines in the markets of the several States, or particularly in the so-called great distributing market at New York Harbor, or with any other purpose or result whatsoever.

This defendant denies each and every other allegation contained in item (*a*) of the said paragraph, the purposes thereof as alleged and each and every inference drawn therefrom, in respect of its purchases of coal and of its contracts therefor, in anywise inconsistent with or different from the facts in respect thereof hereinafter averred and set forth, that is to say:—

This defendant was created a corporation by An Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to incorporate the Laurel Run Improvement Company," approved the eighth day of May, 1871, with power, inter alia, to purchase, sell, transport, and mine coal, to mine and manufacture iron, to acquire, from time to time, by purchase, lease or otherwise, such lands as they may deem expedient; to subscribe for and purchase the lands or stock of any other incorporated company in the State of Pennsylvania, and it was in said act further enacted that it should

be lawful for any railroad or mining company existing under the laws of the said State to subscribe for and purchase the stock or to purchase or guarantee the bonds of the company thereby incorporated; that afterwards, to wit: December 21, 1871, by the order of the Court of Common Pleas for the City and County of Philadelphia, entered in the due course of law, the name, style and title of the Laurel Run Improvement Company, was changed to The Philadelphia and Reading Coal and Iron Company; that, afterwards, about the first of January, 1873, the defendant, having acquired coal lands and mines, actively entered upon the business for which it was created; that at that time there were many individuals, firms and corporations engaged in the business of mining and selling anthracite coal in the vicinity where the lands and mines of this defendant were located, from many of whom this defendant
177 immediately began to purchase coal for resale in the markets, and has continued, in the ordinary and usual course of its business, to the time of the filing of this answer, to make contracts therefor, save during the several periods hereinafter mentioned, when the said operations were conducted by Receivers appointed by this honorable Court, that is to say, from May 24, 1880 to May 16, 1884, from June 2, 1884 to January 2, 1888, and from February 20, 1893 to December 1, 1896; that during the said several receiverships the Receivers continued in the ordinary and usual course of business to make contracts for the purchase of coal from the miners or producers, to be forwarded to and sold in the markets with the coal produced from the mines operated by them, and in cases where there were existing permanent and unexpired contracts for the purchase of coal previously made by this defendant, they were performed by the Receivers, respectively, after their appointment; that this defendant has always held itself forth as ready and willing to purchase the coal produced by other operators in the vicinity of its mines, at the prevailing prices, but has at no time taken any step or measure to force or influence the making of such contracts upon any party or person against his own free will and best judgment; the motives which induce the said contracts being the greater economy in the making of sales, inasmuch as this defendant is obliged to employ and provide and maintain sales and soliciting agencies at the several markets where its coal is sold in the regular and orderly conduct of its own business, and the average cost and expense of making the sales is diminshed by the increased quantities resulting from such purchases, and that the said parties have found from many years' experience that it is otherwise mutually advantageous economically and otherwise profitable to continue the conduct of this business by means of such purchases and sales. That, by virtue of the order and decree of this Court, entered on the first day of May, 1896, at the suit of The Pennsylvania Company for Insurances on Lives and
178 Granting Annuities against this defendant and others, to No. 9 April Sessions, 1895, and of a certain deed dated October 23, 1896, executed pursuant to the said decree, the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, granted and conveyed unto Charles Henry Coster and Francis Lynde

Stetson, both of the City, County and State of New York, all and singular the property and estates of this defendant, including its said mines and colleries and other assets and property; that afterwards the said Charles Henry Coster and Francis Lynde Stetson, by their deed dated November 18, 1896, granted and reconveyed the same premises to this defendant, whereby it became reinvested with its former legal title thereto and therein; that notwithstanding the said proceedings and conveyances, the Receivers appointed by this Court February 20, 1893, at the suit of Thomas C. Platt against this defendant and others to No. 1 of April Sessions, 1893, continued in the control, possession and operation of the said property and estates, until December 1, 1896, when, by virtue of the orders of this Court duly entered in the said suit, they were surrendered and delivered up to this defendant, which thereafter continued in the possession and operation thereof. That, during the operations of the said Receivers, certain pre-existing coal purchase contracts being about to expire, the said Receivers negotiated certain extensions of some, and new contracts with others and caused the same to be executed by this defendant, with their assent noted thereon; that, after its said reentry upon its said property and premises and prior to the first day of October, 1900, this defendant entered into other contracts for the purchase of coal, in lieu of pre-existing contracts, some of which had been negotiated by the said Reveivers, all of which were in force and effect until supplemented and succeeded by the new contracts negotiated and executed under the circumstances hereinafter set forth, that is to say: for a long time prior to the first day of October, 1900, this defendant and other mine operators in the region in which their mines are located, commonly called the
179 Schuylkill region, were peacefully prosecuting their operations in amity with their workmen, but at or about that time a voluntary association, organized under the name of the United Mine Workers of America, and having their headquarters at Indianapolis, in the State of Indiana, of which one John Mitchell was named as President and W. B. Wilson, as Secretary-Treasurer, inaugurated a strike of the mine workmen in some portions of the anthracite coal regions of the state, whereunder substantially all the workmen in the said regions abandoned their work, under the force and effect of violence, turbulence and intimidation, and the employees and workmen of this defendant and others in the same neighborhood were induced or compelled by like violence, turbulence and intimidation to abandon their employment, and shortly afterwards it was represented, in substance, to the officials of this defendant, and the representatives of other mining companies by one Marcus A. Hanna, acting as Chairman of the Republican National Committee, in the then pending political campaign for the election of candidates for President and Vice President of the United States, that if the said strike should not be speedily settled by an advance in the wages of the workmen in and about the mines in the entire anthracite region, the strike would extend to the States of Ohio, Indiana and Illinois, and that the election of Mr. McKinley and Mr. Roosevelt would be thereby endangered; that, at or about the same time, or

shortly afterwards, said Hanna represented to this defendant's officials and representatives, and the representatives of other mining companies, that he was authorized to settle the strike through Mr. Mitchell, if the operators would offer to their workmen a ten per cent. advance in wages by means of a notice to be posted at the collieries in the form presented by the said Hanna, with the statement that the same had been prepared by the official representatives of the United Mine Workers of America; that, after a great deal of pressure and persuasion on the part of the said Hanna and of the communication of positive assurances of the actual danger of the situation,
180 this defendant did agree to advance the wages of its mine and colliery workmen ten per cent. and to give notice thereof, and thereupon this defendant publised a notice to that effect at its several collieries, and this defendant is informed and believes that the other principal mine owners and operators, whose representatives had been in the said conferences with the said Hanna, agreed to a like advance in the wages to their workmen, respectively, and published notices thereof; but it so happened that the official representatives of the said United Mine Workers of America nevertheless refused to allow or permit the resumption of mining operations in any part of the anthracite coal regions, unless and until a uniform advance of ten per cent. in the wages of their workmen should be made throughout all of the several regions, by all the operators engaged in mining and producing anthracite coal; that many of the said operators had therefore absolutely refused to assent to or offer to make the said advance so demanded by the said mine workers; that thereupon the officials and representatives of this department, on further pressure and importunity on the part of the said Hanna, in order to relieve the situation so described, to bring about industrial peace, to resume mining operations and continue the supply of anthracite coal for consumption, believed that it was desirable and necessary to enter into conference with the said mine operators who had been unwilling to offer or to make the said advance in wages so demanded by the officials or representatives of the said United Mine Workers of America; that thereafter conferences were held between the officials or representatives of the principal mine operators who had theretofore offered the said advance in wages and the representatives of the principal mine operators who had to do so; that, as the result of the agreement of the said last mentioned operators severally to offer and make the said advance in wages so demanded by the said representatives of the said United Mine Workers of America, this defendant was obliged to and did agree with certain of the operators severally, with whom it had pre-existing contracts for the purchase of the coal to be produced
181 by them respectively and who were severally the tenants or lessees of this defendant, to enter into new contracts with such as should desire to do so, increasing the prices to be paid for the coal to be produced by them, respectively, and to be sold and delivered to this defendant; and this defendant now avers that all of the said conferences between the said several principal mine operators and said individual operators, and the said purchase con-

tracts which resulted therefrom, were wholly brought about, compelled and forced upon this defendant by the turbulence, violence and intimidation aforesaid, by the failure of the Government of the United States and that of the Commonwealth of Pennsylvania to enforce the laws to protect this defendant and its workmen in the peaceful and lawful prosecution of their work and by the importunities of the said Hanna in the supposed exigencies of the pending political campaign, whereby this defendant was obliged, most unwillingly, to buy its peace and the peace and protection of its workmen by the said advance in wages; and that the said conferences were in no way whatsoever, in the least degree, induced by the motives, nor by the alleged unlawful result, so indefinitely alleged and set forth in the Plaintiff's petition; that afterwards this defendant, so moved, induced and compelled as aforesaid, did enter into the several contracts for the purchase of coal with certain of the said operators, its tenants and lessees, with which it had pending, unexpired and pre-existing contracts, that is to say; with the St. Clair Coal Company, a contract dated July 12, 1901; with the Enterprise Coal Company a contract dated July 17, 1901; with E. White and Company a contract dated October 15, 1901; with the Pine Hill Coal Company, a contract dated August 17, 1901, and with the Excelsior Coal Company a contract dated December 5, 1892, all of which said contracts, including the pre-existing contracts above mentioned, this defendant craves leave to produce and introduce in evidence at the hearing; that afterwards this defendant entered into similar contracts for the purchase of the coal to
182 be produced by them with the Buck Run Coal Company, by contract dated March 12, 1902, and with the Llewellyn Mining Company, by contract dated May 22, 1903, both of whom are tenants and lessees of this defendant, which said last named contracts, this defendant craves leave to produce and introduce in evidence at the hearing of this suit.

And this defendant avers that neither the said contracts, nor the negotiations and arrangements preliminary thereto alleged and set forth in Plaintiff's petition, were designed or intended, nor did they have the effect, to draw or to force the great majority or any majority, or any other number of the so-called independent operators located on the lines of the Philadelphia and Reading Railway and branches or in the vicinity where the mines or collieries of this defendant are located, into making the contracts described in the Plaintiff's petition, so as to prevent them from selling their output in competition with this defendant's mines, or with any other design or purpose whatsoever; on the contrary, this defendant avers that it did not then or since make contracts for the purchase of their output with a very large majority in number of the so-called independent operators, upwards of twenty in number, who are the tenants or lessees of this defendant, and who mine, produce and sell anthracite coal from the lands of this defendant, nor with any of the large number (upwards of fifteen in number) of the so-called independent operators whose mines are located on the lines of the said Philadelphia and Reading Railway Company, but whose output is produced from their own

lands, or from the lands of other owners than this defendant, making upwards of thirty-five of such so-called independent operators from whom this defendant does not purchase their product or output, as compared with the seven above named so-called independent operators from whom this defendant does make such purchases; this defendant denies that, in pursuance of any previous or other agreement between the several defendants herein or any of them, it offered to make or did make and conclude with nearly all the so-called independent operators along the lines of the said Philadelphia
183 and Reading Railway Company, or of any other carrier, new contracts agreed upon beforehand by the defendant carriers in concert, but it admits that it did make the said above mentioned contracts with the said so-called individual operators, five in number, with whom it had pre-existing contracts, not from any of the motives, inducements or considerations set forth and alleged in the Plaintiff's petition, nor as the result of any combination or agreement between this defendant and any one or more of the other defendants, but wholly and solely in consideration of the fact that because of the said compulsory advance in the wages to be paid to miners and other workmen, the cost of mining and producing anthracite coal would be so greatly enhanced and increased that the said pre-existing contracts could not be thereafter performed by the said individual operators, or any of them, without material and substantial loss from their operations, and upon their severally undertaking to advance the rate of wages so demanded by the said United Mine Workers of America, this defendant undertook and agreed with each of them, severally, to enter into permanent contracts for the purchase of their product or output at the prices set forth and provided for in the said several contracts, which said contracts provided for the suitable and adequate preparation of the coal to be delivered, so as to be sold on the markets on an equality with the coal to be produced and sold by others in the same or similar markets, and that the said several contracts were entered into for the consideration and from the motives and inducements hereinabove set forth and no other whatsoever.

This defendant denies that while the said contracts are cast in the form of contracts for sale, they are in reality, as alleged in the Plaintiff's petition, but mere devices to stifle competition and create a monopoly in the sale of anthracite coal throughout the several States in the manner set forth in Plaintiff's petition; on the contrary, this defendant avers the said contracts entered into by it are bona fide, valid, subsisting contracts between the parties thereto,
184 competent under the laws of the Commonwealth of Pennsylvania to deal with each other in respect of the subject matter thereof, made within the said Commonwealth, and to be fully and completely performed there, as they purport to be, and this defendant is advised by Counsel and believes and so charges, that the said contracts are not subject, nor is either of them subject, to the provisions of the said Act of Congress of July 2, 1890.

And this defendant answering unto the several matters and things alleged and set forth in item (*b*) of Paragraph VII of the

Plaintiff's petition, says that it is an utter stranger to the said alleged transactions between the said Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, and it denies that either of the said last named companies are or ever were competitors either with each other or with any other carrier for the anthracite coal produced or purchased and sold by this defendant or any part thereof.

And this defendant, answering unto the several matters and things alleged in item (*c*) of the said paragraph VII of Plaintiff's petition, says that it is an utter stranger to the said alleged transactions between Reading Company, and the supposed owners and holders of shares of the capital stock of the Central Railroad Company of New Jersey, but it admits that the said Reading Company is the equitable or beneficial owner of an interest in certain of the shares of the capital stock of this defendant as it is hereinbefore admitted and alleged, and it denies that the said Central Railroad Company of New Jersey is, or ever was, a competitor with the said Philadelphia and Reading Railway Company, or with any other carrier for the coal produced or purchased and sold by this defendant. It denies that the said transactions have resulted in destroying every motive for competition between this defendant and the said Lehigh and Wilkes-Barre Coal Company as alleged, or that such competition is in fact destroyed, or in any wise affected.

This defendant, answering unto the several matters and things alleged and set forth in item (*d*) of Paragraph VII of the
185 Plaintiff's petition, says that it is an utter stranger to the said several matters and things alleged and set forth respecting the said so-called independent operators in the Wyoming and Lehigh regions, their promotion of the organization of the New York, Wyoming and Western Railroad, to the transactions of the said Simpson and Watkins and their motives therefor, to the said alleged transactions of Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company and the New York, Susquehanna and Western Railroad, and to all and singular the several other matters and things alleged and set forth in the said item of the said paragraph.

This defendant, answering unto the several matters and things alleged and set forth in item (*e*) of Paragraph VII of the Plaintiff's petition, says that it is an utter stranger to the said several matters and things alleged and set forth in the said item of the said paragraph.

VII.

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save as to those which are hereinbefore expressly confessed, for further and additional answer unto so much and such parts of the said petition contained in Paragraph VII thereof as allege and charge that the said several coal purchase contracts entered into by this defendant

and shown to the Court in connection with its answer to said paragraph are void, and contrary to the provisions of the Act of July 2, 1890, and seek the decree of this Court that the said contracts are contracts in restraint of trade and commerce among the several States, and constitute a part of the aforesaid combination or conspiracy, charged in Paragraph VII of said petition, to re-
186 strain such trade and commerce and monopolize a part thereof, and are therefore illegal and void under both sections 1 and 2 of the said Act of July 2, 1890; that the said contracts be delivered up to be cancelled and that this defendant, its agents and servants, and all persons acting or assuming to act under its authority, be forever enjoined from further executing or carrying into effect any of the provisions of the said contracts, and from making or entering into any contracts of like character hereafter, this defendant further answering says:

That each of the said contracts, and the subject matter thereof severally, in its purport and in truth and in fact, is confined to the sale and delivery of anthracite coal produced and to be produced in the Commonwealth of Pennsylvania by persons and corporations resident there, without regard to the ultimate markets to which the same may or might be consigned or sold by the purchaser; that they are wholly local and domestic contracts made and wholly performable within the said Commonwealth of Pennsylvania, which do not bear upon, affect, or otherwise relate to trade or commerce among the States, or with foreign nations, and are therefore wholly without the jurisdiction of the Congress of the United States, and the laws enacted thereby. Wherefore this defendant alleges that neither the said contracts, nor either of them, nor the said parties thereto, nor any of them, are within the cognizance or jurisdiction of this Court, in this suit.

VIII.

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save as they are hereinbefore acknowledged and confessed, for further and additional answer to so much and such parts of the said petition as seek the decree of this Court declaring the said coal purchase con-
tracts made by this defendant as it has hereinbefore shown,
187 to be illegal and void, that they be delivered up to be cancelled and that the defendant and its agents, etc., be enjoined from further executing or performing the same, this defendant avers and alleges that no such decree can, in equity and good conscience, or ought to be made and entered in this suit against this defendant, forasmuch as the other parties to the said several contracts would be left free to sue for the enforcement thereof, or for damages for this defendant's failure to perform the same, in the Courts of the Commonwealth of Pennsylvania, wherein each and all of the said parties are resident, in which said suits in equity or actions at law the decree of this Court could not be pleaded in bar of such suits or actions.

1. Wherefore there are not proper parties to the said petition, and there is not and are not any person or persons party or parties to the said petition, who represents or represent, or has or have a common interest with, the said other persons, whose interests the said petition affects, and against whose said contracts and interests the decree so sought would operate.

2. And, in that behalf, this defendant avers that the said several absent parties may not, consistently with the rules of practice and procedure of this Court, or in the ordinary and usual course of procedure in equity, be made parties to this suit, because it appears upon the face of the petition that the same is exhibited against the several other defendants therein named as defendants thereto, for distinct and separate matters and causes, in several whereof, as appears by the said petition, the said absent persons are not in any manner interested or concerned, and the said petition and this suit would, therefore, by bringing in the said absent parties, become altogether multifarious.

3. And further, in that behalf, this defendant avers that it is advised by Counsel and believes that, in case the Plaintiff
188 believes the said contracts to be unlawful and void and contrary to the said Act of Congress, the same can be adjudged and determined by this Court in separate suits joining this defendant and the said other parties to said contracts, without joining the other defendants herein, who, as it appears on the face of the said petition, are not in any manner interested or concerned in the subject of the said contracts, or in the performance thereof.

IX.

And by protestation, and not confessing or acknowledging all or any of the matters and things in the said Plaintiff's petition to be true in such manner and form as the same are alleged, save as they are hereinbefore confessed, this defendant for a further and additional answer says:

1. That it appears by the said petition that the same is exhibited against this defendant, and the several other corporations therein named as defendants thereto, for distinct matters and causes, in several whereof, as appears by the said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore altogether multifarious.

2. That it appears by the said petition that the same is exhibited against this defendant and the several other corporations named therein as defendants, in several whereof, as appears by the petition, the said other defendants are not, and neither of them is, in any manner interested or concerned, and, in respect thereof, this suit can proceed as against this defendant to hearing and decree without the presence of any of the said other defendants, wherefore the said petition is altogether multifarious.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith it is by the said petition charged, without this, that any other matter, cause or thing
189 in said Plaintiff's petition contained, material or necessary for this defendant to make answer unto, and not herein and

hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

[SEAL.] By W. G. BROWN, *Secretary.*

CHARLES HEELNER,

Solicitor for Defendant.

J. D. CAMPBELL, *Of Counsel.*

190 [*Answer Lehigh Valley Coal Co. Filed September* 12, 1907.]

In the Circuit Court of the United States for the Eastern District Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE READING COMPANY and Others, Defendants.

Separate Answer of The Lehigh Valley Coal Company, One of the Defendants Herein.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception
191 which can or may be had or taken to the many errors, uncertainties and imperfections in the said Petition contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to answer, saith:

I.

This defendant admits that it is a corporation organized under the laws of the Commonwealth of Pennsylvania and authorized to own and operate coal mines in said Commonwealth and to buy, sell and otherwise deal in anthracite coal in that and other States. If the other matters set out in the first paragraph of the Petition are material it prays that the same may be duly proved.

II.

This defendant denies the existence of any unlawful contracts or combinations (as alleged in the second and other paragraphs of the Petition) to which this defendant is in any way a party.

Except as herein set forth this defendant, being without sufficient knowledge, does not admit any of the matters alleged in the second paragraph of the Petition and prays that if material the same may be duly proved.

III.

This defendant has no knowledge as to the franchises or corporate powers of any of the defendant carriers, and prays that if material the same may be duly proved. This defendant admits that a majority in interest in its capital stock is owned by the Lehigh Valley Railroad Company and that the President of this defendant is also the President of the Lehigh Valley Railroad Company.

This defendant denies that the Lehigh Valley Railroad
192 Company and itself are in any way identical or that any identity between them has been recognized by the Supreme Court of the United States or by any other court. This defendant was incorporated for the purpose of mining, buying and selling coal and owning coal lands. The Lehigh Valley Railroad Company was incorporated for the purpose of carrying for hire persons and commodities that may be tendered to it for that purpose. The business of the two corporations is wholly distinct and independent.

IV.

This defendant admits that in the New England and Middle Atlantic States anthracite coal is an article largely used for domestic purposes; but it denies that anthracite coal is an article of prime necessity or is universally used in said territory. The particular kind of coal used in the various portions of this country is determined by the source of supply, the purpose for which it is used in each particular case, and the cost of the mining and distribution thereof. This defendant denies that by reason of any unlawful contracts, combinations or conspiracies to which this defendant is a party, either directly or indirectly, competition in the mining or selling of coal is in any way stifled or restricted. Except as hereinbefore set forth, this defendant, being without sufficient knowledge, does not admit the truth of the matters alleged in the Fourth paragraph of the Petition and prays that if material the same may be duly proved.

V.

This defendant denies that the surplus output of anthracite coal mined or produced by it and not consumed in the State of Pennsylvania is carried chiefly to tide water at New York Harbor.
193 A very large portion of the anthracite coal mined or purchased by this defendant, and not consumed in Pennsylvania, is transported to Buffalo, New York, and to various points in the Western States and in Canada. This defendant is willing to admit that the price of anthracite coal in New York has been for the convenience of miners and shippers thereof largely used to fix the price of such coal in the markets of the several States which get their supply through distribution from points in New York Harbor. This defendant has no knowledge as to the place to which that part of the output of anthracite coal produced by other miners or shippers of coal, and not consumed in Pennsylvania, is chiefly carried, and prays that if material the same may be duly proved.

VI.

This defendant has no knowledge as to the matters set out in the Sixth paragraph of the Petition, and prays that if material the same may be duly proved.

VII.

This defendant has no knowledge as to the average price of anthracite coal at tide-water during the years 1890 to 1895 as alleged in the Seventh paragraph of the Petition, and prays that if material the same may be duly proved. This defendant believes that the fluctuations in the price of anthracite coal at tide-water from time to time have been due chiefly to the fluctuations in the demand therefor. In times of business prosperity when the demand has increased, the price has risen; in times of business depression, such as the years 1894 and 1895, the price has fallen. So far as this defendant has any knowledge or information, the price
194 of anthracite coal at tide-water was not substantially affected in any way by the leases procured by the Philadelphia and Reading Railroad Company, referred to in the Sixth paragraph of Petition. This defendant denies that at any time it entered into any unlawful agreement, scheme, combination or conspiracy by which the parties thereto acquired or sought to acquire the power to control, regulate, restrain or monopolize either the production of anthracite coal or its transportation from the mines in Pennsylvania to any other points, or its price or sale at any points; or that as the result of any action to which this defendant was a party, competition in the transportation or sale of anthracite coal has been in whole or in any part unlawfully suppressed or the price thereof to consumers in any degree unlawfully enhanced. This defendant denies, as it has heretofore denied, that it ever entered into any illegal combination or into any combination in furtherance of any illegal purpose.

For many years commencing prior to 1892, this defendant had contracts with some of the miners of coal at points along the lines of the Lehigh Valley Railroad for the purpose of the purchase of the output of their mines. Subsequently to 1892 this defendant entered into contracts with a number of other such miners for the purchase of their output for a stated percentage of the average price of such coal prevailing at tide-water. These contracts were the result of prolonged negotiations between the miners and shippers of coal, and this defendant entered into them with a view to reducing the cost of the distribution of coal mined along the lines of the Lehigh Valley Railroad and thus to the benefit not only of the miners and shippers but also of the consumers of such coal. After these contracts had continued in force for some years, at the instance of the miners of coal who had entered into the same,
195 they were terminated and other contracts were entered into by which said miners agreed to sell to this defendant all the anthracite coal thereafter mined from such mines, as by each separate agreement might be specified, for the price as to prepared sizes of anthracite coal of 65 per centum of the market price of such

coal at tide-water to be determined in the manner provided in the agreement. By said contracts it was expressly provided that this defendant as buyer should order monthly from the miner a just proportion (measured by the colliery capacity of the seller) of the entire quantity of coal which this Company had agreed to purchase and not less than a just proportion of all the anthracite coal which the requirements of the market might from time to time demand. The copy annexed to the petition and marked Exhibit "A" is a copy of the general form of the contracts so entered into by this defendant. The main inducement to this defendant for entering into said contracts was the provision therein made for a higher standard of preparation of said coal for market. This defendant denies that either directly or indirectly it fixed the percentages to be paid by it under said contracts at a point which bore such a relation to the published rates of transportation that any independent operator who entered into one of such contracts realized more on his coal per ton than was realized by any other independent operator who shipped coal, equally well prepared upon his own account and paid the published rates of transportation therefor. This defendant denies that it paid any sum whatever, either directly or indirectly, for the privilege of controlling the sale or disposition of the anthracite coal mined by the so-called independent operators with a view to preventing them from selling their output in competition with the output of defendant's own mines. This defendant denies that said contracts
196 are other than contracts for the purchase and sale of coal mined as appears by their terms, and denies specifically that they are mere devices to stifle competition or to create a monopoly in the sale of anthracite coal as alleged in Paragraph Seven (*a*) of the Petition. The effect of said contracts was to cause miners who complied therewith to prepare their coal in a better way so that it was of a more uniform quality and therefore more acceptable to consumers than coal not so prepared. The difference in price, if any, realized from the sale of such coal was largely due to its superior preparation.

The miners who entered into said contracts are not proper parties to this cause or to any relief prayed therein.

Except as herein set forth, this defendant has no knowledge as to the matters set out in Paragraph Seven (*a*) of the Petition, and prays that, if material, the same may be duly proved.

This defendant has no knowledge as to the matters set out in Paragraph Seven (*b*) of the Petition, and prays that, if material, the same may be duly proved.

This defendant has no knowledge as to the matters set out in Paragraph Seven (*c*) of Petition, and prays that, if material, the same may be duly proved.

This defendant was not a party to the agreements alleged in Paragraph Seven (*d*) of the Petition, and is advised by counsel that it is not required to make any answer with respect thereto.

This defendant has no knowledge as to the matters alleged in Paragraph Seven (*e*) of the Petition and prays that, if material the same may be duly proved. This defendant denies, as it has

hereinbefore denied, that it has at any time been engaged in any unlawful combination or conspiracy with reference to the
197 mining or transportation, purchase or sale of anthracite coal, or that it has in any respect violated any statute of the United States or of the State of Pennsylvania relative thereto.

VIII.

This defendant denies that, by virtue of the premises or by virtue of any matter set out in the Petition, or in the answers thereto, the petitioner is entitled to any relief by way of discovery or otherwise from this defendant.

IX.

This defendant prays that it may, under the rules of court in such case made and provided, be permitted to avail itself of all matters of defense in law or equity to the merits of the Petition in its above answer set forth, of which it might have availed itself by demurrer or plea in bar with the same force and effect as though it had filed a separate demurrer or demurrers, plea or pleas in bar.

X.

This defendant prays to be thus dismissed with its reasonable costs in this behalf most wrongfully sustained.

THE LEHIGH VALLEY COAL COMPANY,
By E. A. ALBRIGHT,
[SEAL L. V. COAL CO.] *Assistant Secretary.*

JOHN G. JOHNSON,
Solicitor for Defendant.

198 [*Answer Lehigh & W.-B. Coal Co. Filed September* 13, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania. April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE LEHIGH AND WILKES-BARRE COAL COMPANY, Impleaded with THE READING COMPANY and Others, Defendants.

The Separate Answer of the Lehigh and Wilkes-Barre Coal Company.

The Lehigh and Wilkes-Barre Coal Company answers the petition herein as follows:

I.

As respects the allegations of the petition to it relating it admits

(1) That it is a coal company owning and operating anthracite coal mines in the State of Pennsylvania and buying and selling anthracite coal in that State.

(2) That the Central Railroad Company of New Jersey owns about nine-tenths of its (the Lehigh and Wilkes-Barre) capital stock, and that George F. Baer, who is also president of The Central Railroad Company of New Jersey and the Reading Company, the Philadelphia and Reading Railway and The Philadelphia and Reading Coal and Iron Companies, is its president.

199 (3) That it has entered into contracts for the purchase of coal with three coal operators or companies whose mines are located, as its are, on the lines of The Central Railroad Company of New Jersey, viz: with the Melville Coal Co., the Parish Coal Co. and the Red Ash Coal Co., to which contracts, to be produced in court, this defendant refers for the contents thereof; but it denies that such contracts are other than lawful contracts, and particularly that they are, or could operate as, devices to stifle competition and create a monopoly in the sale of anthracite coal; and it alleges that these contracts are valid contracts, made within the State of Pennsylvania between parties who are citizens of Pennsylvania and are to be wholly performed in said State, and that none of them are subject to the provisions of the Act of Congress of July 2, 1890.

II.

As respects the allegations of the petition relating to the Central Railroad Company of New Jersey it refers to the answer of the said Railroad Company, which has been exhibited to it, hereby on information and belief admitting all that is therein admitted, denying all that is therein denied, and alleging to be true all that is therein so alleged.

III.

As respects the allegations of the petition relating to the other defendants it has no knowledge or information sufficient to form a belief, and therefore denies each and every such allegation.

IV.

As respects the allegations of the petition relating to it other than those hereinbefore admitted or alleged to be true, it denies each and every one of the same, and it specifically denies

(1) That it has directly or indirectly entered into any agreement, scheme, combination or conspiracy, by virtue of which

200 it either alone or in combination with the other defendants or any of them acquired the power to control, regulate, restrain and monopolize, or by virtue of which it either alone or in such combination has controlled, regulated, restrained and monopolized either the production or transportation of anthracite coal from the mines in Pennsylvania to market points in other States or its

price and sale in or throughout other States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced.

(2) That it has entered into any unlawful contracts, combinations or conspiracies as alleged in the petition, and particularly any such contracts, combinations and conspiracies which stifle competition, either between the defendant carriers or their agencies in the sale of anthracite coal, throughout the several States or between such defendant carriers or their agencies and the so-called "independent operators" or otherwise.

(3) That it, a coal company, is in any sense identical with the Central Railroad Company of New Jersey, a railroad company, and it alleges, on the contrary, that it is a separate corporation, conducting its own business pursuant to its charter powers free from the control of any other corporation or any other control except that which is lawfully exercised by its officers, directors and stockholders, respectively.

V.

For a further and separate answer to those parts of the petition which have for their purpose the enjoining of this defendant from performing the said contracts for the purchase of coal and the cancellation of said contracts, this defendant alleges that no such decree should be made, because the other parties to these contracts are not parties to this suit, and would be left free to compel the enforcement thereof or to recover damages for non-performance thereof in the courts of Pennsylvania, of which this defendant and all the other parties to said contracts are residents.

201 VI.

For a further and separate answer it alleges:

(1) That it appears by the petition that this suit is brought against it and the other corporations named as defendants therein for distinct matters and causes, in several of which this defendant is not interested or concerned, and that the petition is therefore multifarious.

(2) That it appears by the petition that this suit is brought against it and the other corporations named as defendants therein for distinct matters and causes, in several whereof the other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of any of the other defendants, wherefore the petition is multifarious.

Wherefore this defendant prays that the petition be dismissed as against it, with costs.

THE LEHIGH AND WILKES-BARRE COAL COMPANY,

[SEAL.] By G. V. WATERMAN, *Secretary.*

ROBERT W. DE FOREST,
Solicitor and of Counsel for
The Lehigh and Wilkes-Barre Coal Company.

202 [*Answer Pennsylvania Coal Co. Filed Sept.* 9, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including PENNSYLVANIA COAL COMPANY.

Separate Answer of Pennsylvania Coal Company.

The separate answer of the Pennsylvania Coal Company to the petition herein, reserving to such defendant the objection thereto, appearing on the face thereof, that the same states no cause for citing this defendant to appear in this Honorable Court, and shows no violation of any statute of the United States, further answers said petition as follows:

203 I.

This defendant is an utter stranger to all the unrelated and irrelevant matters alleged in paragraphs I, II, III, IV, V, VI and VII, subdivisions *a, b, c* and *d*, of the petition, except that this defendant admits it is a corporation of the State of Pennsylvania owning and operating anthracite coal mines in said State, and also buying and selling anthracite coal. It expressly denies that it ever, at any time, or place, entered into any agreement, scheme, combination, or conspiracy, to control, regulate, restrain, or monopolize the production of anthracite coal, or its transportation from mines to markets, or its price, or its sale, or that it ever took any steps in furtherance of any illegal agreement, scheme, combination, or conspiracy for any such purpose.

II.

Further answering said petition this defendant alleges that it became a corporation of the State of Pennsylvania under special Act of the Legislature of that State in 1838, under the name of the Washington Coal Company; that ever since that time this defendant has had legal power as such corporation to buy coal lands, and to buy coal, also to mine and to sell coal. Ever since such time this defendant has in fact owned and held valuable coal lands in the State of Pennsylvania, and has mined anthracite coal thereon, and has sold the same. This defendant has also bought and sold coal during the time aforesaid as it lawfully might do. In 1895 this de-
204 fendant was reincorporated under the laws of the State of Pennsylvania. The increase in the price of such coal is not due to any monopoly thereof, but is due to the greater expense of mining it from mines, many of which are becoming exhausted, also

to the greater cost of labor and materials, due, in part, to the great increase in gold and prices generally in the past ten years; in part, to the increase in wages brought about as the result of the strike in 1900 of the men in the anthracite mines for higher wages, and in part to the increase in wages awarded by the Coal Strike Commission in 1902 and 1903 in settlement of the strike of such men for higher wages in 1902. Anthracite coal is not a prime necessity. It is in constant competition with bituminous coal, wood and coke, and it cannot be sold at too high a price, because bituminous coal in particular is a cheaper and better fuel for most purposes, although it is not so clean and free from smoke as anthracite coal, and it is for this reason that anthracite coal is much used for domestic purposes in New England, the Middle Atlantic States and Canada. In other parts of the country, however, and generally the world over, anthracite coal is not used for fuel, but bituminous coal, or wood, are cheaper fuel, and universally used. The profit upon anthracite coal is very small, much being mined at a loss, and the profit often not exceeding five cents a ton for millions of tons, whereas if there was a monopoly in control of the market, and anthracite coal was a
205 prime necessity, and there was no competition in it, or of other fuels with it, no monopoly would be content with so small a profit as the producers thereof now receive upon millions of tons. The truth is there is and can be no monopoly of the market for it, because over twenty per cent. of such coal is hauled to market by three railroads not even alleged to be parties to any conspiracy or monopoly combination. Independent operators as defined in the bill produce a large part of it, and all anthracite coal, as alleged, has to compete with bituminous coal, coke and wood, as fuel, and such fuels are usually much cheaper than anthracite coal. This defendant has continued to mine and sell anthracite coal at only a fair profit from the beginning of its career to the present time. It has continued its business in the same way since as before the alleged combination was made to secure a monopoly. It is not identical with any railroad company, nor has the Supreme Court of the United States held otherwise. It has not been a party to dividing the anthracite tonnage between the railroads, nor has such tonnage ever been so divided to its knowledge. Prior to 1902 this defendant mined its own coal, and made no purchase contracts. In 1902 it leased coal land to the Elk Hill Coal & Iron Company, and at the same time made with that company a contract to purchase the coal mined from said land for sixty-five per cent of the average market price at New York Harbor. This defendant has no other coal purchase contract. In buying coal under such coal purchase contracts
206 the title thereto passes at the breaker's mouth in the State of Pennsylvania. Such sale is bona fide, is controlled by and legal under the laws of Pennsylvania, and such contracts are not devices to violate any Act of Congress, nor is any Act of Congress thereby violated.

III.

This defendant is informed that the Erie Railroad Company, having lawful power so to do, has acquired a majority of the capital

stock of this defendant, but the holders thereof had the lawful right to sell such stock, the Erie Railroad Company has the lawful right to buy it, this defendant could not lawfully interfere or prevent such sale, and no Act of Congress prohibited such sale of stock, or was thereby violated. At the time of such sale this defendant was not the owner of either the Erie and Wyoming Valley Railroad Company, or the Delaware Valley and Kingston Railroad Company, nor did it create or control either of said railroad companies, and what stock therein the stockholders of this defendant then owned or controlled they could lawfully sell to the Erie Railroad Company, despite any obligation of this defendant, and without the violation of any Act of Congress.

And this defendant says that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for distinct matters and causes, in several whereof, as appears by said petition, this
207 defendant is not in any manner interested or concerned, and that the petition is, therefore, multifarious. And this defendant further says that as to the matters relating to this defendant, the contracts made by it are contracts made in the State of Pennsylvania and authorized by the laws thereof and that none of said matters set forth as to this defendant relate to interstate commerce, and that none of them are in violation of the said Act of Congress of 1890, and that no cause of action is shown by said petition against this defendant, and this defendant prays that it may have the same benefit of this defense as if presented by demurrer.

And this defendant denies all manner of unlawful agreement, combination and confederacy wherewith it is by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied is true to the knowledge and belief of this defendant. All of which matters this defendant is ready to maintain and prove as this Court shall direct and prays to be hence dismissed, with costs.

PENNSYLVANIA COAL COMPANY,
[SEAL.] By DAVID BOSMAN, *Secretary.*

GEO. F. BROWNELL,
Solicitor and Counsel for Defendant.

208 [*Demurrer Hillside C. & I. Co. Filed September* 9, 1907.]

United States Circuit Court, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

Separate Demurrer of The Hillside Coal and Iron Company, a Corporation, Defendant in the Above-entitled Suit.

Now comes the defendant, Hillside Coal and Iron Company, a corporation of the State of Pennsylvania, and a defendant in the above entitled suit, by its attorney, for the special purpose of demurring to the petition herein and of objecting to the jurisdiction of this Court until the questions raised by this demurrer are decided, and by protestation, not confessing or acknowledging all or any part of the
209 matters or things in said petition or bill of complaint contained, in such manner and form as the same are therein set forth and alleged, this defendant does demur to the said petition or bill of complaint, and for causes of demurrer thereto it respectfully shows this Court:

First. That said petition or bill of complaint is wholly without equity, in that it states no cause of action against this defendant, and in that it appears by the plaintiff's own showing in said petition that the plaintiff is not entitled to the discovery or relief prayed for therein as against this defendant.

Second. That it appears from said petition or bill of complaint that this Court has no jurisdiction to hear and determine this suit as against this defendant.

Third. That the said petition or bill of complaint is exhibited against this defendant, and against the several other defendants therein named, for several distinct and independent matters and causes which have no relation to each other, and in several of which, as appears by the petition, this defendant is in no way interested, concerned or implicated.

Wherefore, and for divers other good causes of demurrer appearing on the face of said petition or bill of complaint, this defendant does demur thereto. And this defendant prays the judgment of this Honorable Court whether it shall be compelled to make any answer to said petition or bill of complaint; and further prays
210 to be hence dismissed with its reasonable costs in this behalf sustained.

HERBERT A. TAYLOR,
ADELBERT MOOT,
Solicitor and of Counsel for said Defendant.

STATE OF NEW YORK,
County and City of New York, ss:

G. A. Richardson, makes solemn oath and says that he is the Vice-President of the above named corporation, said Hillside Coal and Iron Company, defendant, and that the foregoing demurrer is not interposed for delay.

G. A. RICHARDSON.

Sworn to and subscribed before me this 9th day of September, 1907.

[L. S.]

A. L. TRAVIS,
Notary Public, No. 75, Kings County.

Certificate filed in New York County.
My commission expires March 30, 1909.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

ADELBERT MOOT,
Of Counsel for Defendant.

211 *Order to Place on Equity and Argument List Sur Demurrer of Hillside Coal Co.*

Filed Oct. 19, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

OCTOBER 2, 1907.

Clerk C. C. U. S., Philadelphia.

DEAR SIR: Please place upon the argument list sur Demurrer of Hillside Coal Co., to petition, the case of United States of America vs. The Reading Company, et al., C. C. U. S. in Equity, April Sessions 1907, No. 27.

Yours truly,

ALEX. SIMPSON, JR.,
Of Counsel for Pl'ff.

212 *Order of Court Sur Demurrer of Hillside Coal & Iron Co.*

Filed December 2, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Before Dallas, Cir. J., and Buffington, Cir. J.

And now, December 2, 1907, it is ordered that the Hillside Coal and Iron Company have leave to withdraw the demurrer heretofore filed by it, and to answer the petition of the United States of America and the amendment thereto on or before the first Monday of January, 1908.

By the Court:
Attest:

GEORGE BRODBECK,
Deputy Clerk.

213 [*Answer Hillside C. & I. Co. Filed January 6, 1908.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including HILLSIDE COAL AND IRON COMPANY.

Separate Answer of Hillside Coal and Iron Company to the Petition as Amended.

This defendant now and at all times hereafter saving and reserving unto itself all and all manner of benefit or advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties, insufficiencies and other imperfections in said petition contained, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for this defend-
214 ant to appear in this Honorable Court, or to give this Court jurisdiction as to this defendant, for answer thereunto, or to

so much thereof as this defendant is advised it is material or necessary for it to make answer thereunto, says:

I.

This defendant has not information sufficient for formation of a belief as to any of the matters alleged and set forth in plaintiff's petition (except as to certain matters, as hereinafter specifically set forth), and it prays that the same so far as they may be material may be proven. It expressly denies that it ever, at any time, or place, entered into any agreement, scheme, combination, or conspiracy, to control, regulate, restrain, or monopolize the production of anthracite coal, or its transportation from mines to markets, or its price, or its sale, or that it ever took any steps in furtherance of any illegal agreement, scheme, combination, or conspiracy for any such purpose.

II.

Further answering said petition this defendant alleges that it was organized under special Act of the Legislature of the State of Pennsylvania approved April 12, 1867, that ever since that time this defendant has had legal power as such corporation to buy coal lands, and to buy coal, also to mine and to sell coal. Ever since its organization this defendant has in fact owned and held valuable coal lands in the State of Pennsylvania, and has mined anthracite coal
215 thereon, and has sold the same. This defendant has also bought and sold coal during the time aforesaid as it lawfully might do.

The increase in the price of such coal is not due to any monopoly thereof, but is due to the greater expense of mining it from mines, many of which are becoming exhausted, also to the greater cost of labor and materials, due, in part, to the great increase in gold and prices generally in the past ten years; in part, to the increase in wages brought about as the result of the strike in 1900 of the men in the anthracite mines for higher wages, and in part to the increase in wages awarded by the Coal Strike Commission in 1902 and 1903 in settlement of the strike of such men for higher wages in 1902. Anthracite coal is not a prime necessity. It is in constant competition with bituminous coal, wood and coke, and it cannot be sold at too high a price, because bituminous coal in particular is a cheaper and better fuel for most purposes, although it is not so clean and free from smoke as anthracite coal, and it is for this reason that anthracite coal is much used for domestic purposes in New England, the Middle Atlantic States and Canada. In other parts of the country, however, and generally the world over, anthracite coal is not used for fuel, but bituminous coal, or wood, *are* cheaper fuel, and universally used. The profit upon anthracite coal is very small, much being mined at a loss, and the profit often not exceeding five cents a ton for millions of tons, whereas if there was a monopoly in control of the market, and anthracite coal was a prime necessity, and there was no competition in it, or of other fuels with it, no monopoly
216 would be content with so small a profit as the producers thereof now receive upon millions of tons. The truth is there is and

can be no monopoly of the market for it, because over twenty per cent. of such coal is hauled to market by three railroads not even alleged to be parties to any conspiracy or monopoly combination. Independent operators as defined in the bill produce a large part of it, and all anthracite coal, as alleged, has to compete with bituminous coal, coke and wood as fuel, and such fuels are usually much cheaper than anthracite coal. This defendant has continued to mine and sell anthracite coal at only a fair profit from the beginning of its career to the present time. It has continued its business in the same way since as before the alleged combination to secure a monopoly was made. It is not identical with any railroad company, nor has the Supreme Court of the United States held otherwise. It has not been a party to dividing the anthracite tonnage between the railroads, nor has such tonnage ever been so divided to its knowledge.

III.

This defendant is informed that the Erie Railroad Company, having lawful power so to do, has acquired a majority of the capital stock of this defendant, but the holders thereof had the lawful right to sell such stock, the Erie Railroad Company had the lawful right to buy it, this defendant could not lawfully interfere or prevent such sale, and no Act of Congress prohibited such sale of stock, or was thereby violated.

217

IV.

This defendant admits that it has heretofore entered into several contracts for the purchase of coal with certain mine operators and producers of said coal in form substantially as shown by "Exhibit A" attached to the petition, said contracts being as follows:

Dated November 1st, 1900, with the Green Ridge Coal Company.
" November 1st, 1900, with Robertson & Law.
" February 2nd, 1901, with the Nay Aug Coal Company.
" July 1st, 1901, with the Temple Iron Company (two contracts of the same date).
" June 30th, 1902, with the Delaware and Hudson Company.
" August 11th, 1902, with M. F. Dolphin.
" March 23rd, 1903, with the Clarence Coal Company.
" October 21st, 1903, with the Lackawanna Coal Company.
" April 14, 1904, with the Dolph Coal Company.

This defendant avers that most of said contracts were made with parties, or the successors of parties, who were, and for many years had been, its tenants or lessees or contractors for the sale of their coal to it or both its lessees and tenants and such contractors,
218 and this defendant prays leave to produce and introduce in evidence at the hearing of this suit the said contracts above specified, as well as the pre-existing leases and contracts of said parties or their predecessors.

And this defendant avers that said agreements were and always have been what they purport to be—bona fide agreements for the

purchase and sale of coal at breakers or washeries in Pennsylvania, made within said Commonwealth for the most part with the residents or corporations of said Commonwealth, and in all cases to be fully performed therein; that they were entered into in the exercise of the legal right and power of the parties thereto to make and perform such agreements in Pennsylvania; that they were not entered into either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that they were entered into without any plan, purpose or intent to restrain trade or commerce or to stifle competition, or to fix or maintain prices or to create or to aid in creating a monopoly in the sale of anthracite coal.

V.

And this defendant says that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for distinct matters and causes, in several whereof, as appears by said petition, this defendant is not in any manner interested or concerned, and that the petition is, therefore, multifarious, and that it appears by said petition that this suit is brought against this defendant and the
219 other corporations and individuals named as defendants therein for distinct matters and causes, in several whereof the several defendants are not in any manner interested or concerned, and in respect whereof this suit can be proceeded against it to a hearing and decree without the presence of any of the other defendants, and that said petition is therefore wholly multifarious. And this defendant further says that as to the matters relating to this defendant, the contracts made by it are contracts made in the State of Pennsylvania and authorized by the laws thereof and that none of said matters set forth as to this defendant relate to interstate commerce, and that none of them are in violation of the Act of Congress of July 2nd, 1890, referred to in the petition and that no cause of action is shown by said petition against this defendant, and this defendant prays that it may have the same benefit of this defense as if presented by demurrer.

And this defendant denies all manner of unlawful agreement, combination and confederacy wherewith it or the other defendants may be by said petition charged, without this that any other matter or thing in the plaintiff's petition or amended petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied is true to the knowledge and belief of this defendant. All of
220 which matters this defendant is ready to maintain and prove as this Court shall direct and prays to be hence dismissed, with costs.

HILLSIDE COAL AND IRON COMPANY.
[SEAL.] By DAVID BOSMAN, *Secretary.*

HERBERT A. TAYLOR,
Solicitor for Defendant.
ADELBERT MOOT,
Of Counsel.

221 [*Answer N. Y., S. & W. Coal Co. Filed September* 9, 1907.]

United States Circuit Court, Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

The Separate Answer of The New York, Susquehanna and Western Coal Company, One of the Defendants, to the Petition of the United States of America, Plaintiff.

I. This defendant admits that it is a corporation of the State of Pennsylvania, and that it owns and leases to other parties anthracite coal lands in the State of Pennsylvania, and that it buys and sells and deals in anthracite coal in the State of Pennsylvania, but denies that it operates coal mines or has ever done so. This defendant has no knowledge as to the other matters set forth in Paragraphs
222 I, II and III of the petition, except that it admits that the majority of its capital stock is owned by The New York, Susquehanna and Western Railroad Company. It denies that it is identical with said Company.

II. This defendant has no knowledge as to the matters set forth in Paragraph IV of the petition, except in so far as the matters therein referred to are matters of general knowledge and information. This defendant denies the contract, combination and conspiracy alleged in said paragraph.

III. This defendant denies that the coal not consumed in Pennsylvania is chiefly carried to New York Harbor, but has no knowledge as to the other matters set forth in Paragraphs V and VI, except so far as the same are matters of general knowledge.

IV. As to the matters set forth in Paragraph VII this defendant denies the charge that it has entered into any agreement, scheme, combination or conspiracy with the other defendants, or any of them, to control or monopolize the production or sale or transportation of coal, or for any other unlawful purpose.

V. As to the matters stated in sub-division (*a*) of Paragraph VII of the petition, this defendant says that prior to the year 1893 it owned coal lands which it leased to operators, but did not
223 operate coal mines or deal in coal, that in the year 1893 this defendant took an assignment from The New York, Susquehanna & Western Railroad Company of several contracts for the purchase of coal, some of which contracts were of similar general character to that of Exhibit "A" annexed to the petition. Like contracts have been in use for more than twenty years in the anthracite coal trade, and they have been used and have grown into their present form not with any view of controlling prices, nor with any such

effect, but because they have been found best adapted to the exigencies of the business. The opening of a coal mine is usually a matter of great expense, involving the investment of hundreds of thousands of dollars before any income can be derived, and the mine when opened must be kept running at great daily cost. Many owners will not open and operate their mines unless they have assured in advance a steady market for their coal, and this need of a market continues during the whole period of the life of the mine. The operator cannot afford to store coal after it is mined, and the principal purchasers who are found competent to handle the coal continuously and in large quantities, are the large Coal Companies, which have a wide trade and facilities in New York Harbor and elsewhere for handling coal in large quantities. It is impossible to settle a fair price for coal in advance for a long term of years, and, therefore, the parties agree upon some fair method of ascertaining the
224 market price from time to time; and a common method, although not invariable one, is to adopt the New York Harbor price and to provide for arbitration to ascertain it in case of dispute. Certain other provisions are necessary and are inserted for the protection of the buyers. They cannot profitably purchase the coal and store it because storage is expensive and wasteful. The only economical way to handle coal is to keep it moving from the time it leaves its bed in the mine until it reaches the consumer or retail dealer. Accordingly the Coal Company in its contract of purchase usually reserves the right within reasonable bounds to direct the amount of the monthly or other periodical deliveries at the breaker, so that the Company may use the coal to fill its orders as called for without storage. The Coal Company must be able to supply coal not only to retailers and consumers in carload lots but also in shipload lots. For the protection of the mine operator against discrimination as to the quantity taken in favor of other operators, or in favor of the mines owned by the Coal Companies themselves, the operator usually insists on provisions against such discrimination, and for arbitration in case of dispute on this point. These provisions, together with provisions insuring the quality of the coal, are usually inserted in contracts for the sale of coal to the Companies selling largely in the New York market, but it is no part of the contract that the coal shall be taken to New York Harbor. The sale and delivery are complete at the breaker, and the Coal Companies deliver the coal at
225 their pleasure at points other than New York Harbor. The transactions between the coal operators and the Coal Companies under such contracts are not interstate commerce, but are contracts of sale for future delivery, which are carried out, and fully completed, in the State of Pennsylvania. The reference to the market price is made, solely to ascertain the price to be paid for the coal from time to time, and the market price at New York Harbor is usually adopted as the measure of the price because that is the point where deliveries are largest, and where the great extent of the competition puts the price beyond the control of interested parties and where the price can be most definitely ascertained. The only concerted action by this defendant with reference to its contracts with

coal purchasers and operators was in the year 1900 when a strike of miners was threatened unless wages should be increased both by the Coal Companies and by the operators whose coal was sold under contract to the Coal Companies. Committees were appointed representing this defendant and other Coal Companies to confer with each other, and with the agents of miners, and the Coal Companies were willing to raise the wages ten per cent., but the operators were unwilling to make such increase because it would leave them without a sufficient margin for profit. Thereupon, in order to bring about a settlement of the labor controversy, it was agreed between the committees representing these interests to increase the percentage
226 of the operators to sixty-five per cent. of the market price on terms that there should be some modification of the other provisions of the contract in the interest of the purchasers, such as better provision for clean coal, and for avoidance of disputes. The form of contract prepared to embody these changes is that set forth in Exhibit "A," and was the form generally adopted at that time. It embodied the changed terms and was an improvement in details on the varying contracts previously in use. The adoption of said form had no reference to controlling the market price, nor are said contracts intended to operate in any manner as a restraint of interstate trade, nor do they in fact accomplish such restraint, or any monopoly of such trade.

This defendant has never operated any coal mines, and at the present time purchases coal under contracts with operators of two breakers only, and has bought coal under no others for several years last past. This defendant deals in no coal other than that which it obtains from these two breakers. One of these contracts is with J. & J. Jermyn, dated November 1st, 1900, and was a substitute made under the circumstances above set forth in this paragraph for several previous contracts whereby this defendant, prior to November 1st, 1900, purchased all the coal from the same mines which previous contracts bore various dates between December 27th, 1882, and May 6th, 1890. The other contract held by this defendant, now in force, is dated in 1895, and was made with The Dolph Company, and was not renewed in 1900, or since, because as originally made
227 it contains provisions whereby the percentage of the operator would be as high as that paid to any other operator. This contract was a substitute for previous contracts under which this defendant and its predecessors, prior to 1895 and since 1881, had been receiving the coal from the same lands.

VI. This defendant has no knowledge as to the matters set forth in Paragraphs VII-*b*, VII-*c*, VII-*d* or VII-*e* of the petition.

VII. And this defendant says that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for distinct matters and causes in several whereof, as appears by said petition, this defendant is not in any manner interested or concerned, and that the petition is, therefore, multifarious. And this defendant further says that all the matters referred to in the petition relating to this defendant and all the matters with respect to which relief is sought against this de-

fendant, are contracts of sale made and fully to be performed in the State of Pennsylvania and authorized by the laws thereof and that none of said matters set forth as to this defendant relate to interstate commerce, and that none of them are in violation of the said Act of Congress of 1890, and that no cause of action is shown by said petition against this defendant, and this defendant prays that it may have the same benefit of this defense as if presented by demurrer.

228 And this defendant denies all manner of unlawful agreement, combination and confederacy wherewith it is by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered confessed or denies is true to the knowledge and belief of this defendant. All of which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed, with costs.

THE NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY.
[SEAL.] By J. E. PACKER, *Assistant Secretary.*

COLLINS & CORBIN,
Solicitor and Counsel for Defendant.

229 [*Answer Temple Iron Co. Filed Sept.* 3, 1907.]

April Sessions, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY, THE TEMPLE IRON COMPANY et al., Defendants.

The Separate Answer of the Temple Iron Company, One of the Defendants Above Named, to the Petition of the United States of America, Plaintiff in this Case.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be taken to the many errors, uncertainties and other imperfections in the said petition contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

This defendant admits that it owns and operates anthracite mines in the State of Pennsylvania, as charged and averred
230 in the first paragraph of the petition; that it is a corporation of the State of Pennsylvania, and on the 22d day of March,

in the year of our Lord one thousand eight hundred seventy-three, it was duly incorporated under and by virtue of an Act of Assembly of the State of Pennsylvania entitled "An Act to provide for the incorporation of iron and steel manufacturing companies," approved the 21st day of March, Anno Domini 1873, and letters patent under the Great Seal of the Commonwealth of Pennsylvania were issued to said company to transact and do all and everything authorized by the said Act of Assembly above quoted.

That on the 26th day of January, A. D. 1899, this defendant, by due corporate action, accepted the provisions of the Constitution of the State of Pennsylvania adopted December 16th, 1873, and all of the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, approved April 29th, 1874, entitled "An Act to provide for the incorporation and regulation of certain corporations, and its supplements," which acceptance of said Constitution and said Act of Assembly was duly filed with the Secretary of the Commonwealth, and letters patent issued to the said The Temple Iron Company according to law.

That by virtue of its chartered rights this company is authorized to operate anthracite mines in the State of Pennsylvania, to purchase and hold lands for the purpose of such mining, to acquire and hold property, real and personal, to purchase and hold the stock of other companies and to do all such other acts and things as a successful and convenient prosecution of its business may require.

This defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph one of the petition.

231

II.

This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph two of the petition.

III.

This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph three of the petition.

IV.

This defendant denies that anthracite coal is an article of prime necessity anywhere, or that it is universally used for domestic purposes throughout the New England and Atlantic States or elsewhere, or to any great extent in the other sections of the country, save in a few of the larger cities and towns situated in some parts thereof; and further says that if the said allegation is in any wise pertinent or material to be inquired of and determined in this suit, it demands strict proof thereof.

As to the other matters and things alleged in the said fourth paragraph of the petition, this defendant denies any knowledge or information sufficient to form a belief of each and every other allegation of paragraph four of the petition, and it emphatically denies

that it ever, at any time or place or under any circumstances whatsoever, entered into, became a party to, or participated in any wise whatsoever in any of the supposed or alleged unlawful contracts, combinations or conspiracies indefinitely asserted and charged in said fourth paragraph of the petition.

232

V.

In answer to the fifth paragraph of the petition, this defendant has not sufficient knowledge or information to make answer thereto. The business of this defendant is to mine anthracite coal and sell the same as its collieries. What part of the anthracite production is sold at tidewater in New York, or in any other place, this defendant does not possess sufficient information to make intelligent answer thereto. If, however, the matters alleged in said fifth paragraph are in any way pertinent to this issue, it requires proof thereof.

VI.

This defendant denies any knowledge or information sufficient to form a belief of each and every allegation of paragraph six of the petition.

VII.

This defendant, answering the vague, indefinite, impertinent, uncertain and scandalous charges, allegations and statements set forth and alleged in clause *d* of the seventh article of the petition, waiving exceptions thereto for their obvious scandal and impertinence, denies emphatically that it had anything to do with or was concerned in any scheme or conspiracy with any of the other defendants named in the petition, to prevent The New York, Wyoming & Western Railroad Company to be organized, as set forth in the first part of clause *d* of article 7 of the petition; and it further denies that the said The New York, Wyoming & Western Railroad Company therein named connected with the coal regions where the mines of Simpson & Watkins were located and tidewater.

233 The terminal points mentioned in the charter of said company are described as follows:

"From a point on the Delaware River, in Northampton County, Pennsylvania (being also on the boundary line between the States of New Jersey and Pennsylvania), opposite or near Belvidere, New Jersey, and thence to a point on the Susquehanna River within or near Pittston, Luzerne County, Pennsylvania."

And it further denies that the Simpson & Watkins, named in said petition, "were the chief supporters of this movement;" that of the five thousand shares subscribed for in the articles of association of said railway company, Clarence D. Simpson subscribed for two hundred and fifty shares and Thomas H. Watkins for five hundred shares.

And further answering said clause *d* of the seventh article of the petition, this defendant denies that The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Com-

pany, the Erie Railroad Company and The New York, Susquehanna and Western Railroad Company purchased in their interests the entire capital stock, to wit: two hundred forty thousand dollars ($240,000) of the defendant, The Temple Iron Company.

And this defendant further answering said item *d*, says that it is not true that "through a series of contemporaneous transactions this company, acting for the aforesaid defendants, acquired at a high price the eight collieries of the firm of Simpson & Watkins," but this defendant admits that by virtue of its charter, granted by the State of Pennsylvania, it did purchase all of the capital stock, assets and property of certain corporations, also incorporated under and by virtue of the laws of Pennsylvania, to wit: The Forty Fort Coal
234 Company, The Mt. Lookout Coal Company, The Wyoming Land Company, The Wyoming Electric Light Company, The Babylon Coal Company, The Sterrick Creek Coal Company, The Edgerton Coal Company, The Hendrick Land Company, The Northwest Coal Company, and four-fifths of the capital stock, assets and property of The Lackawanna Coal Company, Limited, a limited partnership created under and by virtue of the laws of Pennsylvania.

That said purchase was made as aforesaid and all and every the terms thereof are fully set forth in a written agreement entered into between this defendant and Simpson & Watkins, bearing date the 27th day of February, 1899, a true copy of which written agreement is attached to this answer and made a part hereof, and is designated Exhibit A; and this defendant further says that said purchase was purely a business transaction to enable the said defendant to successfully and conveniently prosecute its business, as authorized by its charter; that the price paid for said properties by this defendant was not a high price, considering the value of the property acquired, and was purely a business transaction, highly beneficial to this defendant.

And this defendant further answering says:

That it is not true, as stated in clause *d* of article 7 of the petition, that the stock and bonds of The Temple Iron Company were of little value standing alone. In truth and in fact The Temple Iron Company is a perfectly solvent corporation; that the property purchased of Simpson & Watkins is of great value, and the assets of The Temple Iron Company today and at the time of filing the petition in this case, are and were far in excess of the par value of its stock and bonded indebtedness.

At the time of the purchase, in order to provide the means where-
with to pay for the property purchased by this defendant
235 from Simpson & Watkins, and in order to secure The Guaranty Trust Company of New York in furnishing the money necessary to carry out and perfect the purchase, an agreement in writing was entered into, dated the 27th day of February, 1899, by this defendant, The Guaranty Trust Company of New York, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, and The New York, Susque-

hanna & Western Railroad Company, a true and correct copy of which said agreement is hereunto attached and made part of this answer, and is designated as Exhibit B; and on the same day, to wit, on the 27th day of February, 1899, a like agreement was entered into between The Reading Company, The Guaranty Trust Company of New York and this defendant, a true copy of which said agreement is hereunto attached and made part of this answer, and is designated Exhibit C.

That in procuring the agreements, Exhibit B and C, this defendant availed itself of the provisions of an Act of the General Assembly of the Commonwealth of Pennsylvania, approved April 15th, 1869, entitled "An Act to authorize railroad and canal companies to aid in the development of the coal, iron, lumber and other material interests of this Commonwealth," wherein it is provided "that it shall and may be lawful for railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber and other material interests of this Commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guarantee of or agreement to purchase the principal and interest or either of such bonds."

And this defendant denies that the guarantees referred to in said agreements were based on the total percentage of the anthracite tonnage carried annually by each of said railroad companies; and this defendant further denies all the allegations in said peti-
236 tion which are stated to be other than as contained in said agreements, Exhibits A, B and C; and it further denies that by entering into said agreements, it formed or entered into a combination or conspiracy to restrain trade and commerce in anthracite coal among the several States by shutting out competition in the transportation and sale of that commodity, and regulating the price thereof among the several States, or that it has monopolized or attempted to monopolize, and combined and conspired with any of the other defendants to monopolize the coal trade, or any part thereof, in violation of the provisions of sections 1 and 2 of the Act of Congress of July 2nd, 1890.

And this defendant further answering says, that when it purchased the properties of Simpson & Watkins, The Forty Fort Coal Company had a contract of sale for its coal with The Lehigh Valley Coal Company and The Delaware, Lackawanna & Western Railroad Company; that The Mt. Lookout Coal Company also had a contract for the sale of its coal with The Lehigh Valley Coal Company and The Delaware, Lackawanna & Western Railroad Company; that The Babylon Coal Company had a like contract with The Lehigh Valley Coal Company; that The Sterrick Creek Coal Company had a like contract with the Hillside Coal & Iron Company; that The Edgerton Coal Company also had a like contract with The Hillside Coal & Iron Company; that the Northwest Coal Company had a like contract for the sale of its coal with the firm of Dickson & Eddy (who were the sales agents of The Ontario & Western Railroad Company) and The Hillside Coal & Iron Company; that The Lackawanna Coal Company, Limited, had a like contract

with The New York, Susquehanna & Western Coal Company and The Hillside Coal & Iron Company; that these contracts with modifications have been continued between the several companies mentioned to the present day, and at the time the petition in this case was filed there existed the following contracts, substantially in form with Exhibit A, attached to and made part of the petition in this case to wit: between The Temple Iron Company and The
237 Lehigh Valley Coal Company, dated September 20th, 1901, by the terms of which the coal produced at The Forty Fort Coal Company, The Mt. Lookout Coal Company and The Babylon Coal Company was sold to The Lehigh Valley Coal Company; also an agreement between The Temple Iron Company and The Hillside Coal & Iron Company, for the sale of the coal mined at The Sterrick Creek Colliery; also agreement dated the 27th of August, 1901, between The Lackawanna Coal Company, Limited, and The Delaware, Lackawanna & Western Railroad Company; also agreement between The Lackawanna Coal Company, Limited, and The Hillside Coal & Iron Company, dated October 21st, 1903; also agreement between The Temple Iron Company and The Hillside Coal & Iron Company, dated July 1st, 1901, for the sale of the coal from The Northwest Coal Company; and the contract with Dickson & Eddy has also been continued to the present day, and the coal from The Northwest Coal Company has been shipped over The Ontario & Western Railroad Company in the same proportions as before the contract was made with Simpson & Watkins, and substantially there has been no change made in the shipment of the coal from the several collieries, and none of it has been diverted to companies other than those to which Simpson & Watkins were selling the same.

And this defendant further answering says, that its purchase of the collieries, stock, assets and property, as set forth in its Exhibit A, was a perfectly legitimate and legal transaction; that it made said purchase by the authority of the Commonwealth of Pennsylvania contained in its charter granted by said Commonwealth; that the property purchased was wholly located within the State of Pennsylvania; and the corporations and limited partnership from which it purchased said property were all incorporated by and under the laws of Pennsylvania and had full power and authority to sell and convey said property, as set forth in said Exhibit A.

238 That in procuring the contracts or agreements set forth in Exhibits B and C, this defendant was also acting within its chartered rights and in no way transcended its authority in procuring and becoming a party to said agreements, by the terms of which the other parties thereto became possessed of or guaranteed its capital stock and bonded indebtedness, said parties having full authority so to do, as hereinbefore set forth.

That the contracts known as sixty-five per cent contracts, schedule A of the petition, were entered into for the sole purpose on the part of this defendant of disposing and selling its coal at its mines in the State of Pennsylvania; that its said contracts are highly beneficial to this defendant and are such contracts as it has a right to enter into under the laws of Pennsylvania.

And this defendant further answering says, that the properties, contracts and agreements so vested in it as aforesaid are sacred property rights, which it is entitled to fully enjoy under the Constitution and laws of the State of Pennsylvania, and under the Constitution of the United States of America; that its stockholders are legally entitled to hold and enjoy their stock, they having paid the par value of said stocks in cash into the treasury of this defendant; and this defendant denies the right of this plaintiff to abrogate any of said contracts, or any of its rights thereunder; that while part of the product of its mines is undoubtedly transported and sold beyond the limits of the Commonwealth of Pennsylvania, this defendant protests for that reason it cannot be disturbed in its constitutional right to hold the properties in question, and to enjoy the full benefit of the contracts hereinbefore recited. This defendant denies that it has had *had* anything to do, directly or indirectly, with fixing the price of coal in the market, or that it has, directly or indirectly,
conspired, confederated, or agreed with any other person or
239 corporation to fix such price, nor is this defendant vested with
any power whereby it could fix the price of such coal, nor has this defendant, directly or indirectly, entered into any agreement, written or oral, or any combination, or conspiracy, to fix or influence the rate of transportation in the State of Pennsylvania or beyond its borders, into or among any other State or States of the United States of America; nor has any act or agreement on the part of this defendant had any such effect upon interstate commerce; nor is it in the power of this defendant, under its charter and the agreements herewith submitted, to either limit the price of coal or interfere in any way with the commerce between the States.

And this defendant further answering the allegations contained in the seventh paragraph of the petition, denies any knowledge or information sufficient to form belief of each and every allegation of items *b*, *c*, and *e* in the seventh paragraph contained.

And this defendant further emphatically denies that through any concerted action on its part with The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, or the New York, Susquehanna & Western Railroad Company, in the purchase of the properties aforesaid, it directly or indirectly caused the abandonment of the construction of The New York, Wyoming & Western Railroad Company, or that it throttled or attempted to throttle competition in the transportation and sale of anthracite coal; and it further denies that the product of its mines is pooled and divided among The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, or The New York, Susquehanna & Western Railroad Company. The product of its mines is sold under
the agreements hereinbefore set forth.

240 And this defendant for further and additional answer unto clause *a* of the seventh paragraph of the petition, wherein it is alleged that the contracts, similar to that marked Exhibit A,

attached to the petition are mere devices to stifle competition and create a monopoly in the sale of anthracite coal throughout the several States of the Union, and are void and contrary to the provisions of the Act of July 2d, 1890, and seek the decree of this court that the said contracts are contracts in restraint of trade and commerce among the several States, and constitute a part of the aforesaid combination or conspiracy charged in paragraph seven of the petition to restrain such trade and commerce and monopolize a part thereof, and are, therefore, illegal and void under both sections 1 and 2 of the said Act of July 2d, 1890; that the said contracts be delivered up to be canceled and that this defendant, its agents and servants and all persons acting or assuming to act under its authority, be forever enjoined from further executing and carrying into effect any of the provisions of said contracts and from making and entering into any contracts of like character hereafter, says:

That each of said contracts now existing between this defendant and the other parties thereto, designated as sixty-five per cent. contracts, hereinbefore specifically set forth, and the subject matter thereof, severally, in its purport and in truth and in fact, are confined to the sale and delivery of anthracite coal, produced and to be produced in the Commonwealth of Pennsylvania, to corporations resident therein without regard to the ultimate markets to which the same may or might be consigned or sold by the purchaser; and they are wholly local and domestic contracts, made and wholly performable within the said Commonwealth of Pennsylvania, which do not bear upon, affect or otherwise relate to trade or commerce among the States and with foreign nations, and are, therefore, wholly without the jurisdiction of the Congress of the United States,
241 and the laws enacted thereby. Wherefore, this defendant alleges that neither the said contracts, nor either of them, nor th said parties thereto, nor any of them, are within the cognizance or jurisdiction of this court in this suit.

VIII.

For further and additional answer to so much and such parts of the said petition as seek the decree of this court, declaring the said sixty-five per cent. contracts made by this defendant as hereinbefore shown, to be illegal and void, that they be delivered up to be canceled, and that the defendant and its agents be enjoined from further executing or performing the same, this defendant avers and alleges, that no such decree can, in equity and good conscience, or ought to be made and entered in this suit against this defendant, for as much as some of the parties to the said several contracts would be left free to sue for the enforcement thereof, or damages for this defendant's failure to perform the same, in the courts of the Commonwealth of Pennsylvania, in which said suits in equity, or actions at law, the decree of this court could not be pleaded in bar of such suits or actions.

IX.

For further and additional answer to so much and such parts of the petition and the prayers thereof as seek the decree of this honorable court that the defendant, its officers, directors, servants and agents be forever enjoined from permitting The Reading Company, The Lehigh Valley Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Central Railroad Company of New Jersey, The Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company, or any of
242 them, their or any of their attorneys or agents, from voting at any corporate election for directors or officers of the said The Temple Iron Company, or at any other meeting of the Stockholders thereof in their corporate capacity, and that the said The Temple Iron Company, its officers, directors servants and agents be also forever enjoined from paying any dividends to the said The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company, their or any of their officers, directors, servants or agents, on account of the stock aforesaid, and from permitting and suffering the said The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company, their or any of their officers or agents, as such officers or agents, to exercise any control whatsoever over the corporate acts of the said The Temple Iron Company, this defendant alleges and avers that the acquisition of the shares of stock by The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company, as well as their present owning and holding of the same were and are wholly local and domestic transactions, wholly performable within the State of Pennsylvania, which did not and do not bear upon, affect or otherwise relate to trade or commerce among the States or with foreign nations, and are and were, therefore, wholly without the jurisdiction of the Congress of the United States, and the laws enacted thereby.

Wherefore, this defendant alleges that no decree can be made by this court enjoining this defendant from permitting the
243 said companies, as holders of the said stock, to exercise their legal right of voting the same, they having purchased the said stock by virtue of the laws of this Commonwealth; and this defendant respectfully submits that this court has no jurisdiction to restrain this defendant from allowing the purchasers of its capital stock to vote thereon at any election for the directors or officers of said company, or to exercise any right that they are entitled as stockholders to exercise under the laws of the State of Pennsylvania.

X.

For a further answer to said petition this defendant submits to this court, to be read as a part hereof, its exhibit A, being the contract between this defendant and Simpson & Watkins, bearing date February 27th, 1899; and it further submits that in executing said contract it in no way violated the provisions of the Act of Congress, approved July 2d, 1890.

And further, in like manner, this defendant submits its Exhibits B and C, being the contracts, bearing date February 27th, 1899, between this defendant, The Guaranty Trust Company of New York, The Reading Company, The Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company; and it further submits that in executing said contracts it in no way violated the provisions of the said Act of Congress of July 2d, 1890.

And in like manner it further submits the agreement, Exhibit A, attached to and made part of the petition in this case, the
244 same being similar to its existing contracts, for the sale of its coal at the mines, hereinbefore referred to in this answer, to wit: the contracts with The Lehigh Valley Coal Company, The Hillside Coal & Iron Company, The Delaware, Lackawanna & Western Railroad Company, contract with Dickson & Eddy; and it further submits that said contracts in no way, by any of their provisions, are in violation of the provisions of the Act of Congress, approved July 2d, 1890, nor did this defendant in executing said last named contract violate any of the provisions of the Act of Congress aforesaid.

XI.

And by protestation, and not confessing or acknowledging all and any of the matters and things in the said plaintiff's petition to be true in such manner and form as the same are alleged, save as they are hereinbefore confessed, this defendant for further and additional answer says, that it appears by the said petition that the same is exhibited against this defendant, and with several other corporations therein named as defendants thereto, for distinct matters and causes in several whereof, as appears by the said petition, this defendant is not in any manner interested or concerned and that the petition is, therefore, altogether multifarious.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said petition charged, without this, that any other matter, cause or thing in said plaintiff's petition contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and

prove as this honorable court shall direct, and prays to be
245 hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[Seal Temple Iron Co., Incorporated March 22nd, 1873. Temple, Berks Co., Pa.]

THE TEMPLE IRON COMPANY,
By GEO. L. HOUSER, *Secretary.*
WILLARD, WARREN & KNAPP,
Solicitors for Defendant.

E. N. WILLARD, *Of Counsel.*

EXHIBIT A.

The Temple Iron Company.

Simpson & Watkins Agreement.

This Agreement, Made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between

Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pennsylvania (hereinafter called the Vendors), parties of the first part; and

The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania, and having its principal office at Reading, Pennsylvania (hereinafter called the Company), party of the second part:

Witnesseth: That in consideration of the mutual promises hereinafter contained, and the benefits expected to be derived
246 therefrom, the parties hereto have covenanted and agreed, and by these presents do covenant and agree, as follows:

First.

I. By these presents, the Vendors assign, set over and transfer to The Temple Iron Company all of the capital stock, assets and property, free of all debts, liens and liabilities of every kind (except as hereinafter stated), of the following corporations:

(*a*) The Forty Fort Coal Company.
(*b*) The Mount Lookout Coal Company.
(*c*) The Wyoming Land Company.
(*d*) The Wyoming Electric Light Company.
(*e*) The Babylon Coal Company.
(*f*) The Sterrick Creek Coal Company.
(*g*) The Edgerton Coal Company.
(*h*) The Hendrick Land Company.
(*i*) The Northwest Coal Company.
(*j*) The shares of the Lackawanna Coal Company, a limited copartnership of the State of Pennsylvania.

II. The sale and transfer of the above stocks, assets and property are made as of the first day of January, 1899. All cash, bills receivable or accounts representing coal or merchandise or property of any kind sold since the first of January are transferred to the Company. Cash and bills receivable representing transactions prior to January 1, 1899, belong to and are retained by the Vendors, in consideration whereof the Vendors shall and will pay and discharge all debts, liens and liabilities of every kind, other than
247 current liabilities incurred in due course since January 1, 1899, for pay rolls and supplies, and also except the bonded indebtedness mentioned in Schedule A annexed hereto, of each and all of said companies, or charged in any way on their assets or property.

III. All of the said bonds enumerated in the said Schedule A shall and will be paid and be canceled by the Vendors. If for any reason, at the time of the consummation of this agreement, the payment of such bonds shall be impracticable, the Vendors shall pay to, and shall deposit with a Trustee then to be agreed upon by the parties, or, in the event of their failure to agree, to be selected by the Company, a sum of money equal to the aggregate amount of all of said bonds then outstanding at par with accrued interest, and such sum shall be held and applied by the said Trustee until such scheduled bonds shall have been paid and canceled by the Vendors; provided, that in its discretion, from time to time, at the request of the parties of the first part, the Trustee may appropriate the whole or any part of such cash deposited to the purchase or the payment of said scheduled bonds at par.

IV. So far as concerns the shares of the Lackawanna Coal Company, the obligation of the Vendors is subject to this condition:

The Vendors now own and control only one-fifth of the capital stock of the Lackawanna Coal Company, Limited, and do not bind themselves now to transfer or deliver to the Company any more than said one-fifth; but they shall use their best efforts in good faith to acquire and to transfer and deliver to the Company all of the capital shares of the Lackawanna Coal Company, Limited. For the purpose of fixing the proportionate price of these shares, the value of all the shares of the Lackawanna Coal Company, Limited, is fixed at four hundred thousand dollars ($400,000), and such pur-
248 chase price of four hundred thousand dollars ($400,000) shall be the basis on which shall be determined the proportionate value of the shares transferred to the Company in consideration of the securities to be issued therefor.

The Company shall not be obliged to take any part of the capital shares of the said Lackawanna Coal Company after February 18, 1899.

In the event of the failure or inability of the Vendors to acquire and to transfer all of the capital shares of the Lackawanna Coal Company, Limited, there shall be deducted, on the basis aforesaid, such portion of stock or of bonds or of both, deliverable hereunder, as shall be determined by the parties hereto; or, in case of their inability to agree, by the Guaranty Trust Company of New York.

V. Upon the execution and delivery of the securities to be issued by the Company as hereinafter provided, the Vendors also will deliver and pay to the Company the sum of four hundred and ninety-eight thousand three hundred and ninety-six and sixty-six one-hundredths dollars ($498,396.66).

Second.

VI. In consideration and upon completion of the transfers and payments hereinabove provided, the Company will issue and deliver to the Vendors, or upon their order, proper certificates for two million two hundred and sixty thousand dollars ($2,260,000) of the full paid capital stock of the Company; and the bonds of the Company for the aggregate principal sum of three million five hundred thousand dollars ($3,500,000), bearing interest at the rate of four per cent, per annum, payable semi-annually, at the office or agency of the Company in the City of New York, and the principal payable on the first day of January, 1925, both principal and interest
249 being payable in gold coin of the United States of the present standard of weight and fineness, and without deduction for any tax which the Company may be required to pay or to retain therefrom. The mortgage or collateral trust deed, securing such bonds, shall provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (the remaining $11,500,000 bonds to be reserved for the acquisition of new property), and shall contain a proper provision for a sinking fund, and for the acquisition of said bonds by lot for the purposes of such sinking fund at not over 110% and accrued interest. The terms of such bonds and of the indenture securing the same shall be determined by the parties hereto, or, in case of their inability to agree, by the Guaranty Trust Company of New York.

Third.

All the covenants and stipulations in this agreement shall be binding as well upon the executors, administrators, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused these presents to be duly executed and delivered at Scranton, Pennsylvania, the day and year first above written.

In presence of

P. A. NOLAN. [L. S.].
CLARENCE D. SIMPSON. [L. S.].
THOMAS H. WATKINS. [L. S.].
THE TEMPLE IRON COMPANY,
By GEORGE F. BAER, *President.*

Attest:

T. O. YARINGTON, JR., *Secretary.*

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SCHEDULE A.

Company.	Bonds.
The Forty Fort Coal Company	$300,000
The Ba-ylon Coal Company	45,000
The Wyoming Land Company	28,000
The Mount Lookout Coal Company	80,000
	$453,000

EXHIBIT B.

The Temple Iron Company.

Railway Agreement.

An agreement made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called The Iron Company), party of the first part, and Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York (hereinafter called the Trustee), party of the second part, and —— ——, a corporation existing under the laws of the State of —— (hereinafter called the Railway Company), party of the third part.

Whereas, The Temple Iron Company is a corporation of the State of Pennsylvania, organized with all the powers of corporations, for the manufacture of iron and steel under the laws of that State, and to develop the material interests of that State; and in the prose-
251 cution of its lawful purposes has issued, or is about to issue, its capital stock for the par value of $2,500,000, with the expectation of increasing such capital stock and the issues thereof to the aggregate sum of $5,000,000; and also has issued, and proposes to issue, its bonds, secured by mortgage or by collateral trust agreement for the aggregate principal sum of $3,500,000, bearing interest at the rate of four per cent. per annum, payable semi-annually at the office or agency of the Company in the City of New York, and the principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness and without deduction for any tax which the Company may be required to pay or to retain therefrom; the mortgage or collateral trust agreement securing such bonds being intended to contain a proper provision for a sinking fund and to provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (of which $11,500,000 are to be reserved for the acquisition of other property), the form and terms of which bonds and of the indentures securing

the same shall be satisfactory to and be determined by the Trustee, party hereto of the second part; and

Whereas, In the accomplishment of its said purposes the Iron Company desires that the Railway Company shall extend its lawful aid by the purchase of capital stock and bonds of the Iron Company, or of either of them, or by guarantee of or by an agreement to purchase the principal and interest, or both or either, of bonds of the Iron Company; and

Whereas, The Trustee, being owner of the greater part of the capital stock and of the bonds of the Iron Company, desires that the credit and resources of the Iron Company shall be strengthened and increased, and that the value of its shares of capital stock and bonds shall be increased by the means and in the manner hereinafter provided, and consequently is willing to make sale of the shares of the Iron Company to the extent, in the manner and at the times hereinafter specified; and

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Whereas, The Railway Company is engaged or interested in the business of transporting the materials for, or the products of, the Iron Company, or the iron or coal from its mines, and is directly interested in the development of the business of the Iron Company, so as to maintain a permanent supply of coal and so as to obtain and to secure a fair proportion of the traffic from and to the works and mines of the Iron Company; and

Whereas, Under the General Laws of Pennsylvania, as well as by the particular laws under which it operates, the Railway Company has lawful authority for the purposes above indicated, to acquire and to hold the stocks and bonds of the Iron Company, and as a condition of such acquisition to guarantee the payment of the principal and interest of the bonds of the Iron Company; now, therefore,

This Agreement Witnesseth: That in consideration of the premises and of the mutual promises herein contained, and the expected performance thereof, the parties have mutually covenanted and agreed, and by these presents do mutually covenant and agree as follows, viz.:

First. The Railway Company hereby purchases and on any day after January 1, 1904, if and when the Trustee shall so request (in and by a written notice delivered to the Railway Company six months before such day), and in any event on the thirty-first day of December, 1906, the Railway Company as such purchaser thereof will receive, and the Trustee will deliver, valid certificates of the full-paid capital stock of the Iron Company for an aggregate amount equal to — per cent. of the present capital stock of the Iron Company amounting to $2,500,000, and of all additional amounts thereof hereafter issued with the express assent of the Railway Company evidenced by the resolution of its Board of Directors and outstanding; the price for each and every such share by the Railway Company hereby purchased and so to be received to be paid in cash at the time of their actual delivery, being one hundred dollars with interest at the rate of six per cent. per annum thereon from the date of the last dividend on such shares.

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Second. Pending such future delivery, all such shares shall be

held by the Trustee with all the rights of owner thereof, both as to votes and dividends; provided, however, that if at any time the Railway Company shall make default in the faithful, punctual and regular observance and performance of its obligations as hereinafter set forth, the Trustee may sell, and may dispose of, all such shares as the Railway Company may be entitled to receive hereunder, and also the obligations of the Railway Company hereunder in respect thereof. In its discretion and in such form as it may determine, the Trustee may make, issue and sell certificates of beneficial interest in all said shares, subject to the right and obligations of the Railway Company hereunder.

Third. In consideration of the premises, and of the right of the Railway Company thus to become a shareholder in the Iron Company, and as part of the terms of purchase thereof, and also in consideration of the purchase by the Trustee of the bonds of the Iron Company, the Railway Company more particularly covenants and promises as follows, viz.:

1. Until the actual delivery to the Railway Company of the said shares the Trustee shall have, and may and shall enjoy and exercise, the sole and exclusive right to vote upon such shares,
254 and to receive for its own use the dividends in respect thereof.

On the 10th day of December in each and every year up to the date of maturity of said bonds (i. e., up to and including the year 1924) in which the Iron Company shall declare no dividend or shall declare dividends amounting to an aggregate of less than six per cent. for the preceding twelve months upon its entire capital stock issued with the consent of the Railway Company, then and in every such event and notwithstanding the actual delivery of all or any of such shares, the Trustee shall be entitled, by recourse to the "stock reserve" designated in the next Section 2, to make such provision as shall be necessary and sufficient to make up such aggregate of dividends to six per cent. on all of such capital stock.

2. In case in any period of six months ending June 30th or December 31st, in any year, up to including the year 1924, the earnings of the Iron Company shall not be sufficient *a* to set aside a sinking fund equal to 15 cents per ton on all coal mined from the mines of the Iron Company during such six months; *b* to pay interest on its bonds, and *c* to set aside a sum equal to three per cent. on its stock (such sum being hereinafter called "stock reserve"); then any earnings of the Iron Company or such portion thereof as may be necessary shall be applied to the creation of such sinking fund. If such earnings shall be insufficient to create such sinking fund in full, then so far as they will go they shall be applied to the creation of such sinking fund. If such earnings shall be more than sufficient to create such sinking fund in full, but not sufficient also to pay such interest and to provide such "stock reserve" in full, then and in every case of any such deficiency any surplus of such earnings (after providing for the sinking fund), so far as they will go and in the order indicated, shall be applied (a) to pay interest on the bonds of the Iron Company; and *b* to set aside such "stock reserve"; and in every such year (up to and in-

cluding the year 1924), on or before June 10th or December
255 10th, as the case may be, the Railway Company will pay to the Trustee a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the Iron Company acquired under the terms of the agreement between Simpson & Watkins and the Iron Company, dated the 27th day of February, 1899 (and any additional mines hereafter acquired by the Iron Company if the Railway Company, by resolution of its Board of Directors, shall hereafter elect and agree that this agreement shall be extended and applied to such additional acquisition), during such six months transported over any line or controlled or operated by the Railway Company as the initial line in such transportation or such part of such sum as may be necessary to make up the deficiency in such interest and such "stock reserve", and if, notwithstanding such provision there shall yet remain a deficiency in respect of such interest or such "stock reserve", then on said June 10 and said December 10, the Railway Company will pay to the Trustee — per cent. of such deficiency in respect of such interest, and on said December 10, the Railway Company will pay to the Trustee after exhausing the "stock reserve", — per cent. of the deficiency for the year in respect of the 6% dividend on the entire capital stock as last above provided in the preceding Section 1, such percentage being the proportion which the Railway Company is entitled to take of the capital stock of the Iron Company. No contributions to the "stock reserve" shall be used to pay dividends in or for any particular year which, in the aggregate, shall exceed 6% on all the capital stock outstanding in such year.

If on or before any June 1st or any December 1st the Trustee shall determine that on the 30th of June or the 31st of December next ensuing the Iron Company will not have on hand in cash available for the purposes hereof, a sum equal to its earnings for the six months ending such June 30th or December 31st, or such portion thereof as shall be necessary for the payment of the sinking fund and the payment of the semi-annual instalment of interest on its bonds
and shall determine the shortage in this respect, then the
256 Railway Company shall and will on June 10th and December 10th lend to the Iron Company, on the note of the Iron Company, payable ninety days thereafter (unless the Trustee shall deem a shorter time sufficient) — per cent. of such shortage.

For purpose of all determinations of necessary payments on any June 10th and any December 10th, and of giving full effect to all the purposes of "1" and "2" hereof, the Trustee shall make all necessary estimates by June 1st, or by December 1st, as of the 30th of June, or of the 31st of December next ensuing, and payments pursuant to such estimates shall be made by such June 10th or such December 10th. Any necessary final adjustments (to be determined by Trustee) shall be made by the first of February or of the first of August next ensuing.

For the purpose of enhancing the value of the bonds and the stock of the Iron Company, and also of reducing any possible burden

of the Railway Company hereunder, the Iron Company intends to endeavor to induce other companies to make agreements and guarantees substantially similar in character to those herein set forth; and, if the Trustee shall make collections under this agreement and under such other agreements or any of them the Trustee, by February 1st in each year, after suitable provision in full for all requirements of the previous year in respect of the sinking fund, the interest on all the bonded debt and the dividends up to an aggregate of, but not exceeding six per cent. on all the stock of the Iron Company issued under the terms hereof, shall return to the Railway Company and to such other companies as have made such payments any surplus remaining from such payment of such previous year, ratably, according to the amount contributed by each.

3. The Railway Company hereby absolutely and unconditionally guarantees the due, punctual and regular payment of the
257 principal of and the interest upon — % of the bonded indebtedness of the Iron Company issued at any time with the consent of the Railway Company—applicable ratably to its entire bonded indebtedness so issued; and upon request of the Trustee the Railway Company from time to time will execute and deliver to the Trustee such other or additional instruments of guaranty (if any) as may be necessary or proper hereby to express and to effectuate such unconditional guaranty.

4. It is understood that the words "mines of the Iron Company" wherever used herein, shall be held to include any and all lands or collieries or coal mining property of any kind owned, leased or in any way controlled (either by ownership of a majority of the capital stock or otherwise) by the Iron Company.

Fourth. Provision in form satisfactory to the Trustee hereunder shall be made in the mortgage or collateral trust agreement securing said bonds of the Iron Company, whereby a sinking fund of fifteen cents per ton on all coal mined from the mines of the Iron Company shall be set aside, and whereby the Trustee of said mortgage or trust agreement shall apply the same in the redemption of such bonds, by lot, at a price to be fixed in said mortgage or trust agreement, but not exceeding 110% and accrued interest and a suitable reference to this agreement of guaranty shall be printed or stamped upon such bonds.

Fifth. Except with the consent of the Railway Company, expressed by a resolution of its Board of Directors, the capital stock and bonds of the Iron Company, at any time outstanding, shall not exceed $2,500,000 and $3,500,000 respectively.

Sixth. This agreement shall run for the benefit, not only of the parties hereto, their successors and assigns, but also for
258 the benefit of all and several the present and future holders of the stock or of the bonds of the Iron Company.

In Witness Whereof, the several parties hereto severally and respectively have caused their corporate seals to be hereunto affixed.

and these presents to be signed by their proper officers the day and year first above written.

THE TEMPLE IRON COMPANY.
[L. S.] By GEORGE F. BAER, *President.*

Attest:
T. O. YARINGTON, JR., *Secretary.*

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By W. G. OAKMAN, *President.*

Attest:
H. A. MURRAY, *Secretary.*

Signed by Railway Companies as follows:

3 counterparts by

LEHIGH VALLEY RAILROAD COMPANY,
(*a Corporation of Pennsylvania*),
By ALFRED WALTER, *President,*

and attested by John R. Fanshawe, Secretary, for 22 88/100 per cent.

259 3 counterparts by

CENTRAL RAILROAD COMPANY OF NEW JERSEY,
(*a Corporation of New Jersey*),
By J. R. MAXWELL, *President,*

and attested by Samuel Knox, Secretary, for 17 12/100 per cent.

3 counterparts by

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
(*a Corporation of Pennsylvania*),
By SAM. SLOAN, *President,*

and attested by Fred. F. Chambers, Secretary, for 19 52/100 per cent.

3 counterparts by

ERIE RAILROAD COMPANY,
(*a Corporation of New York*),
By E. B. THOMAS, *President,*

and attested by J. A. Middleton, Secretary, for 5 84/100 per cent.

3 counterparts by

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY,
(*a Corporation of New Jersey, Pennsylvania*),
By E. B. THOMAS, *President.*

and attested by J. A. Middleton, Secretary, for 4 68/100 per cent.

MEMO.—See separate agreement as to Reading Company.

260

Exhibit C.

The Temple Iron Company.

Reading Agreement.

An Agreement, Made this twenty-seventh day of February, in the year one thousand eight hundred and ninety-nine, by and between

The Temple Iron Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called the Iron Company), party of the first part; and

Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York (hereinafter called the Trustee), party of the second part; and the

Reading Company, a corporation existing under the laws of the State of Pennsylvania (hereinafter called the Reading Company), party of the third part:

Whereas, The Temple Iron Company is a corporation of the State of Pennsylvania, organized with all the powers of corporations, for the manufacture of iron and steel under the laws of that State, and to develop the material interests of that State; and in the prosecution of its lawful purposes has issued, or is about to issue, its capital stock for the par value of $2,500,000, with the expectation of increasing such capital stock and the issues thereof to the aggregate sum of $5,000,000; and also has issued, and proposes to issue, its bonds, secured by mortgage or by collateral trust agreement, for the aggregate principal sum of $3,500,000, bearing interest at the rate of four per cent. per annum, payable semi-annually at the office or agency of the Company in the City of New York, and the
261 principal payable on the first day of January, 1925, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness and without deduction for any tax which the Company may be required to pay or to retain therefrom; the mortgage or collateral trust agreement securing such bonds being intended to contain a proper provision for sinking fund and to provide for a possible issue of such bonds for an aggregate principal sum not exceeding $15,000,000 (of which $11,500,000 are to be reserved for the acquisition of other property), the form and terms of which bonds and of the indentures securing the same shall be satisfactory to and be determined by the Trustee, party hereto of the second part; and

Whereas, In the accomplishment of its said purposes the Iron Company desires that the Reading Company shall extend its lawful aid by the purchase of capital stock and bonds of the Iron Company, or of either of them, or by guarantee of or by an agreement to purchase the principal and interest, or both or either, of bonds of the Iron Company; and

Whereas, The Trustee, being owner of the greater part of the capital stock and of the bonds of the Iron Company, desires that the credit and resources of the Iron Company shall be strengthened and

increased, and that the value of its shares of capital stock and bonds shall be increased by the means and in the manner hereinafter provided, and consequently is willing to make sale of the shares of the Iron Company to the extent, in the manner and at the times hereinafter specified; and

Whereas, The Reading Company is engaged or interested in the business of transporting the materials for, or the products of, the Iron Company, or the iron or coal from its mines, and is directly interested in the development of the business of the Iron Com-
262 pany, so as to maintain a permanent supply of coal and so as to obtain and secure a fair proportion of the traffic from and to the works and mines of the Iron Company; and

Whereas, Under the General Laws of Pennsylvania, as well as by the particular laws under which it operates, the Reading Company has lawful authority for the purposes above indicated, to acquire and to hold the stocks and bonds of the Iron Company, and as a condition of such acquisition to guarantee the payment of the principal and interest of the bonds of the Iron Company; now, therefore,

This Agreement Witnesseth: That in consideration of the premises and of the mutual promises herein contained, and the expected performance thereof, the parties have mutually covenanted and agreed, and by these presents do mutually covenant and agree as follows, viz.:

First. The Reading Company hereby purchases and on any day after January 1st, 1904, if and when the Trustee shall so request (in and by a written notice delivered to the Reading Company six months before such day), and in any event on the thirty-first day of December, 1906, the Reading Company as such purchaser thereof will receive, and the Trustee will deliver, valid certificates of the full paid capital stock of the Iron Company for an aggregate amount equal to 29.96 per cent. of the present capital stock of the Iron Company amounting to $2,500,000, and of all additional amounts thereof hereafter issued with the express assent of the Reading Company evidenced by the resolution of its Board of Directors and outstanding: the price for each and every such share by the Reading Company hereby purchsed and so to be received to be paid in cash at the time of their actual delivery being one hundred dollars, with interest at the rate of six per cent. per annum thereon from the date of the last dividend on such shares.

263 Second. Pending such future delivery, all such shares shall be held by the Trustee with all the rights of owner thereof, both as to votes and dividends; provided, however, that if at any time the Reading Company shall make default in the faithful, punctual and regular observance and performance of its obligations as hereinafter set forth, the Trustee may sell, and may dispose of, all such shares as the Reading Company may be entitled to receive hereunder, and also the obligations of the Reading Company hereunder in respect thereof. In its discretion and in such form as it may determine, the Trustee may make, issue and sell certificates of beneficial interest in all said shares, subject to the rights and obligations of the Reading Company hereunder.

Third. In consideration of the premises, and of the right of the Reading Company thus to become a shareholder in the Iron Company, and as part of the terms of purchase thereof, and also in consideration of the purchase by the Trustee of the bonds of the Iron Company, the Reading Company more particularly covenants and promises as follows, viz.:

1. Until the actual delivery to the Reading Company of the said shares the Trustee shall have, and may and shall enjoy the exercise, the sole and exclusive right to vote upon such shares, and to receive for its own use the dividends in respect thereof. On the 10th day of December in each and every year up to the date of maturity of said bonds (i. e., up to and including the year 1924), in which the Iron Company shall declare no dividends or shall declare dividends amounting to an aggregate of less than six per cent. for the preceding twelve months upon its entire capital stock issued with the consent of the Reading Company, then and in every such event and notwithstanding the actual delivery of all or any of such shares the Trustee shall be entitled, by recourse to the "stock reserve" desig-
264 nated in the next Section 2, to make such provision as shall be necessary and sufficient to make up such aggregate of dividends to six per cent. on all of such capital stock.

2. In case in any period of six months ending June 30th or December 31st, in any year, up to and including the year 1924, the earnings of the Iron Company shall not be sufficient (*a*) to set aside a sinking fund equal to 15 cents per ton on all coal mined from the mines of the Iron Company during such six months; (*b*) to pay interest on its bonds, and (*c*) to set aside a sum equal to three per cent. on its stock (such sum being hereinafter called "stock reserve"); then any earnings of the Iron Company or such portion thereof as may be necessary shall be applied to the creation of such sinking fund. If such earnings shall be insufficient to create such sinking fund in full, then so far as they will go they shall be applied to the creation of such sinking fund. If such earnings shall be more than sufficient to create such sinking fund in full, but not sufficient also to pay such interest and to provide such "stock reserve" in full, then and in every case of any such deficiency any surplus of such earnings (after providing for the sinking fund), so far as they will go and in the order indicated, shall be applied (*a*) to pay interest on the bonds of the Iron Company, and (*b*) to set aside such "stock reserve"; and in every such year (up to and including the year 1924), on or before June 10th or December 10th, as the case may be, the Reading Company will pay to the Trustee a sum equal to 12½ cents upon and in respect of every ton of coal from the mines of the Iron Company acquired under the terms of the agreement between Simpson & Watkins and the Iron Company, dated the 27th day of February, 1899 (any additional mines hereafter acquired by the Iron Company if the Reading Company, by resolution of its Board of Directors, shall hereafter elect and agree that this agreement shall be extended and applied to such additional acquisitions) during such six months transported over any line owned or controlled or
265 operated by the Reading Company as the initial line in such transportation or such part of such sum as may be necessary

to make up the deficiency in such interest and such "stock reserve," and if, notwithstanding such provision, there shall yet remain a deficiency in respect of such interest or such "stock reserve," then on said June 10 and said December 10, the Reading Company will pay to the Trustee 29.96 per cent. of such deficiency in respect of such interest, and on said December 10, the Reading Company will pay to the Trustee after exhausting the "stock reserve," 29.96 per cent. of the deficiency for the year in respect of the 6% dividend on the entire capital stock as last above provided in the preceding Section 1, such percentage being the proportion which the Reading Company is entitled to take of the capital stock of the Iron Company. No contribution to the "stock reserve" shall be used to pay dividends in or for any particular year which, in the aggregate, shall exceed six per cent. on all the capital stock outstanding in such year.

If on or before any June 1st or any December 1st the Trustee shall determine that on the 30th of June or the 31st of December next ensuing the Iron Company will not have on hand in cash available for the purposes hereof a sum equal to its earnings for the six months ending such June 30th or December 31st, or such portion thereof as shall be necessary for the payment of the sinking fund and the payment of the semi-annual instalment of interest on its bonds and shall determine the shortage in this respect, then the Reading Company shall and will on June 10th and December 10th lend to the Iron Company, on the note of the Iron Company, payable ninety days thereafter (unless the Trustee shall deem a shorter time sufficient) 29.96 per cent. of such shortage.

For purpose of all determinations of necessary payments on any June 10th and any December 10th, and of giving full effect to
266 all the purposes of "1" and "2" hereof, the Trustee shall make all necessary estimates by June 1st, or by December 1st, as of the 30th of June, or of the 31st of December next ensuing, and payments pursuant to such estimates shall be made by such June 10th or such December 10th. Any necessary final adjustments (to be determined by Trustee) shall be made by the first of February or of the first of August next ensuing.

For the purpose of enhancing the value of the bonds and the stock of the Iron Company, and also of reducing any possible burden of the Reading Company hereunder, the Iron Company intends to endeavor to induce other companies to make agreements and guaranties substantially similar in character to those herein set forth; and, if the Trustee shall make collections under this agreement and under such other agreements or any of them the Trustee, by February 1st in each year, after suitable provision in full for all requirements of the previous year in respect of the sinking fund, the interest on all the bonded debt and the dividends up to an aggregate of, but not exceeding six per cent. on all the stock of the Iron Company issued under the terms hereof, shall return to the Reading Company and to such other companies as have made such payments any surplus remaining from such payments of such previous year, ratably, according to the amount contributed by each.

3. The Reading Company hereby absolutely and unconditionally

guarantees the due, punctual and regular payment of the principal of and the interest upon 29.96 per cent. of the bonded indebtedness of the Iron Company issued at any time with the consent of the Reading Company, applicable ratably to its entire bonded indebtedness so issued; and upon request of the Trustee the Reading Company from time to time will execute and deliver to the Trustee such other additional instruments of guaranty (if any) as may
267 be necessary or proper hereby to express and to effectuate such unconditional guaranty.

4. It is understood that the words "mines of the Iron Company" wherever used herein, shall be held to include any and all lands or collieries or coal mining property of any kind owned, leased or in any way controlled (either by ownership of a majority of the capital stock or otherwise) by the Iron Company.

Fourth. Provision in form satisfactory to the Trustee hereunder shall be made in the mortgage or collateral trust agreement securing said bonds of the Iron Company, whereby a sinking fund of fifteen cents per ton on all coal mined from the mines of the Iron Company shall be set aside and whereby the Trustee of said mortgage or trust agreement shall apply the same in the redemption of such bonds, by lot, at a price to be fixed in said mortgage or trust agreement, but not exceeding 110% and accrued interest and a suitable reference to this agreement of guaranty shall be printed or stamped upon such bonds.

Fifth. Except with the consent of the Reading Company, expressed by a resolution of its Board of Directors, the capital stock and bonds of the Iron Company, at any time outstanding, shall not exceed $2,500,000 and $3,500,000 respectively.

Sixth. This agreement shall run for the benefit, not only of the parties hereto, their successors and assigns, but also for the benefit of all and several the present and future holders of the stock or of the bonds of the Iron Company.

In Witness Whereof, The several parties hereto severally and respectively have caused their corporate seals to be hereunto
268 affixed, and these presents to be signed by their proper officers the day and year first above written.

THE TEMPLE IRON COMPANY,
[L. S.] By GEORGE F. BAER, *President.*

Attest:
T. O. YARINGTON, JR., *Secretary.*

GUARANTY TRUST COMPANY OF NEW YORK,
[L. S.] By W. G. OAKMAN, *President.*

Attest:
H. A. MURRAY, *Secretary.*

READING COMPANY,
[L. S.] By J. S. HARRIS, *President.*

Attest:
W. G. BROWN, *Secretary.*

269 *Answer Penna. Co. for Ins. on Lives, Granting Annuities. Filed Dec.* 13, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA
vs.
THE READING COMPANY et al.

Separate Answer of the Pennsylvania Company for Insurances on Lives and Granting Annuities.

1. This respondent admits that it is a corporation organized and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with a place of business at Philadelphia, Pennsylvania, and that it is trustee under an indenture dated the first day of April, 1901, between Reading Company and this respondent, under which there have been delivered to this respondent one hundred and forty-five thousand shares of the capital stock of the Central Railroad Company of New Jersey, of the par value of $100 each; twenty-nine thousand nine hundred shares of the capital stock of the Perkiomen Railroad Company, of the par value of fifty dollars each, and four thousand four hundred shares of the capital stock of the Port Reading Railroad Company, of the par
270 value of $100 each; that said shares have been transferred into its own name as trustee, under the terms of said agreement, and that it still retains possession thereof, under said agreement.

2. This respondent has no knowledge as to any of the other matters set out in the petition filed in the above entitled cause or in the amendment thereto, and prays that if material the same may be duly proved.

3. This respondent prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

[Seal of Pennsylvania Company for Insurances on Lives and Granting Annuities.]

THE PENNSYLVANIA COMPANY, FOR INSURANCES ON LIVES AND GRANTING OF ANNUITIES,
By C. S. W. PACKARD, *President.*

Attest:

JOHN J. R. CRAVEN, *Secretary.*

271 [*Answer Mercantile Trust Co. Filed January* 4, 1908.]

Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA
against
THE READING COMPANY, THE MERCANTILE TRUST COMPANY and Others.

Separate Answer of the Mercantile Trust Company, One of the Defendants in the Above Entitled Cause, to the Petition of United States of America, Plaintiff in said Cause, as Amended.

This defendant now and at all times hereafter saving and reserving unto itself all and all manner of benefit or advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties, insufficiencies and other imperfections in said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

Except as the same are hereinafter specifically admitted
272 or denied, the defendant is an utter stranger to all the matters and things alleged and set forth in plaintiff's petition, and prays that the same, if they are in any way pertinent or material to be enquired of or determined in this suit, may be strictly proved.

II.

This defendant admits that it is the trustee named in a certain mortgage or deed of trust executed by the defendant Erie Railroad Company to this defendant and dated the first day of February, 1901. That among the property covered and pledged by said mortgage or deed of trust are 66,300 shares of the preferred and 66,300 shares of the common capital stock of the New York, Susquehanna and Western Railroad Company.

This defendant further admits that the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company are common carriers engaged in interstate transportation, and that the New York, Ontario and Western Railroad Company operates a line of railroad from the anthracite fields to Oswego on Lake Ontario and other points in Western New York.

III.

Answering subdivision (*b*) of the seventh clause or subdivision of said petition:

This defendant admits that the defendant Erie Railroad Company heretofore acquired certain shares of the capital stock of the New York, Susquehanna and Western Railroad Company, including the shares of said capital stock which are deposited with and held by this defendant as trustee of the mortgage or deed of trust hereinbefore referred to; but denies that the acquisition of said shares was for the purpose of monopolizing, or did, in fact, monopolize the transportation between the several states formerly carried on by said two defendant companies as alleged in said petition, or that
273 in the acquisition thereof the said defendant Erie Railroad Company in any wise violated the provisions of Section 2 of the Act of Congress, approved July 2, 1900, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or of any other statute of the United States, or that the holding of said shares of stock, or any of them, by this defendant is unlawful or in violation of said statutes, or any of them.

IV.

This defendant admits that the said defendant Erie Railroad Company has heretofore acquired certain shares of the stock of the Pennsylvania Coal Company, but denies upon information and belief that the acquisition or holding of said stock, was in any wise unlawful or in violation of any statute of the United States.

V.

For a further, separate and additional defense, this defendant avers and alleges that the defendant Erie Railroad Company has issued, and this defendant, as trustee, has certified, as provided in the mortgage or deed of trust hereinbefore referred to, bonds issued under and secured thereby to the principal amount in the aggregate of thirty-four million dollars, and as this defendant is informed and believes such bonds are now outstanding in the hands of innocent holders thereof for value. That neither the execution and delivery of said mortgage, the assignment and pledge of said shares thereunder, or the issuance and certification of said bonds thereunder are matters, dealings or transactions bearing upon, affecting or in any wise relating to trade or commerce among the States or with foreign nations; and that neither the execution of said mortgage nor the assignment and pledge of said shares thereunder, nor the rights of this defendant or of the holders of said bonds in respect
274 of said shares so pledged are within the cognizance or jurisdiction of this Court in this suit, or can or should be affected by any decree which may be made herein.

VI.

And by protestation not confessing or acknowledging all or any of the matters and things in said petition contained to be true in such manner and form as the same are therein alleged, save as they are hereinbefore acknowledged and confessed, this defendant for a further and additional answer avers and alleges that the petitioner

therein has not made or stated any cause of action or shown any state of facts which entitles it to the relief in said petition demanded, or to any relief in equity whatsoever against this defendant.

VII.

And by protestation not confessing or acknowledging all or any of the matters and things in said petition contained to be true in such manner and form as the same are therein alleged, save as they are hereinbefore acknowledged and confessed, this defendant for a further and additional answer avers and alleges:

(1.) That it appears by said petition that this suit is brought against this defendant and the other persons and corporations named as defendants therein for distinct causes and matters in several and many of which this defendant is not interested or concerned, and that said petition is therefore multifarious.

(2.) That it appears by said petition that this suit is brought against this defendant and the other corporations and individuals named as defendants therein for distinct matters and causes, in several whereof the several defendants are not in any manner interested or concerned, and in respect whereof this suit can be proceeded
275 against it to a hearing and decree without the presence of any of the other defendants, and that said petition is therefore wholly multifarious.

VIII.

This defendant prays that it may, under the rules of court in such case made and provided, be permitted to avail itself of all matters of defense in law or in equity to the merits of the petition in its above answer set forth, of which it might have availed itself by demurrer or plea in bar with the same force and effect as though it had filed a separate demurrer or demurrers or plea or pleas in bar.

And this defendant denies all and all manner of unlawful combination, confederacy and conspiracy wherewith it is by said petition charged.

Without this that any other matter, cause or thing in said plaintiff's petition contained material or necessary for this defendant to make answer unto and not herein, and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge and belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE MERCANTILE TRUST COMPANY,
By ALEXANDER & GREEN, *Its Solicitors.*

WILLIAM W. GREEN,
Of Counsel.

276 [*Answer Delaware & Hudson Co. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of the Delaware and Hudson Company, Which Has Been Made a Party Defendant Herein.

The Delaware and Hudson Company, made a party defendant to this suit by Amendment to the Original Petition of the plaintiff herein, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objection thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this Court jurisdiction as to this defendant, for its separate answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

This defendant admits that it is an owner and miner of anthracite coal in the State of Pennsylvania, and is also a carrier thereof, and avers that it operates a railroad from certain parts of the anthracite coal region in said State of Pennsylvania to various points in the State of New York, including the cities of Albany and Troy on the Hudson River, both of which cities are tide-water points. This defendant, therefore, denies the allegation, contained in the petition, that its line does not extend to tidewater, and further denies the allegation, contained in the petition, that the "defend-

277 ant carriers" therein named operate the only lines of railroad between the anthracite coal fields in Pennsylvania and tide-water points in that and other states, with the exception of a line operated by the Pennsylvania Railroad Company and one operated by the New York, Ontario and Western Railway Company. This defendant avers that it is duly authorized by the Laws of the State of Pennsylvania to own, mine, sell and carry anthracite coal within that State, and is also duly authorized by the Laws of the State of New York to operate railroads for the carriage of anthracite coal therein. The railroads owned or operated by this defendant also extend into the State of Vermont, by due authority of law. This defendant has no knowledge or information, other than the allegations of the petition, as to what percentage of the total tonnage of anthracite coal transported from the mines in the year 1905, or in any other year, was transported by it, or by any other of the defendants, and therefore demands that the plaintiff be

required to make proof of all its allegations as to such percentages. This defendant, however, denies that there was, in the year 1905 or at any other time, any "division" between it either as coal company or carrier and any other person or corporation whatsoever, of any definite or known percentages of the total tonnage of anthracite coal transported from the mines. This defendant further denies that New York Harbor is the principal distributing point for anthracite coal destined to points in New England, and avers that it transports large quantities of anthracite coal into New England by its own lines of railroad.

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in the plaintiff's petition, and not hereinbefore answered, except some of the matters alleged in subdivision (*a*) of paragraph VII. thereof; and for answer thereto this defendant says:

This defendant admits that on or about June 30, 1902, it entered into an agreement in writing, dated that day, with the Hillside Coal and Iron Company, one of the defendants to this suit, a correct copy whereof marked "Exhibit A" is annexed to this Answer as a part thereof. This defendant says that said agreement, which otherwise would have expired by its terms on July 1, 1907, was extended by mutual agreement until April 1, 1908. This defendant says that the said agreement, so extended, is the only agreement or contract by it made with any of the defendants herein, now in force or in force at the time of the filing of the Original
278 Petition of the plaintiff herein, for the purchase or sale of any or all sizes of anthracite coal for an agreed percentage of the general average free-on-board prices received at tidewater for corresponding sizes. And this defendant shows unto this Honorable Court, that said agreement, so extended as aforesaid, will nevertheless expire before the beginning of the April Term, 1908, of this Honorable Court.

And this defendant avers that said agreement is, and always has been, what it purports to be, a bona fide agreement for the sale of coal at defendant's breakers in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create, or to aid in creating a monopoly in the sale of anthracite coal; but that it was entered into by this defendant solely because, in the exercise of its business judgment, it believed and it still believes that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement for the sale of a portion of its coal.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendants may be by paragraph VII*a* of said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer

unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE DELAWARE AND HUDSON COMPANY,
By JAMES H. TORREY, [SEAL.]
Solicitor for said Defendant, Connell Building, Scranton, Pennsylvania.

WILLIAM S. OPDYKE,
JAMES H. TORREY,
Of Counsel.

279 "EXHIBIT A."

An Agreement, made and entered into this 30th day of June, one thousand nine hundred and two, by and between The Delaware and Hudson Company, a corporation of New York, hereinafter called the "Seller," as party of the first part, and the Hillside Coal and Iron Company, a corporation of Pennsylvania, hereinafter called the "Buyer," as party of the second part.

Whereas, the Seller is extensively engaged in mining anthracite coal and selling the same at many points, and in the course of said business has heretofore delivered considerable quantities of coal to the Erie Railroad Company and companies controlled by it at Carbondale, Honesdale and other points for transportation over the roads of the latter company, and the Buyer is desirous of purchasing such coal as the Seller may wish to deliver at said points during the continuance of this contract and the Seller is desirous of selling the same, but at the same time preserving the identity of its tide water business.

Now, therefore, the parties hereto, in consideration of the mutual covenants herein contained, hereby agree with each other as follows.

First. The Seller shall sell and deliver to the Buyer at the delivery points below specified on cars to be furnished to it by the Buyer as hereinafter provided, such part of the Seller's annual output of anthracite coal as it shall not deem to be required in the transaction of its present or future business other than that covered by this agreement, and the Buyer shall purchase and pay for the coal so delivered in accordance with the provisions hereof; but the quantity of coal to be so sold and delivered shall not be less than eight hundred thousand (800,000) tons in each and every year during the continuance of this agreement. The delivery of all such coal which shall be destined to points north or west of Carbondale, Pennsylvania, shall be made at Carbondale, and the delivery of all such coal which shall be destined to points east of Honesdale or Lackawaxen, Pennsylvania, shall be made at Honesdale. Approximately two-thirds (⅔) of the tonnage of coal sold and delivered hereunder

shall in each and every month be delivered at Honesdale, and
280 in case of any deficit the difference shall be made good in the following month. The sizes delivered hereunder shall be proportionally the same as the monthly production at the mines of the Seller, or as may be otherwise mutually agreed upon. The quality of all said coal from time to time shall be equal to the average qu[illegible] of the production of the region.

All deliveries of coal hereunder shall be made in as nearly equal weekly or monthly quantities as may be practicable. The Seller shall send a written notice to the Buyer on or before the 20th day of each month, stating approximately the quantity of each size of coal which will be delivered under this contract during the next succeeding month, and the car capacity which will be required daily for such deliveries; the Buyer shall promptly notify the Seller as to the quantities and sizes which it desires to be delivered at the respective delivery points, and the Seller shall make delivery accordingly. The Buyer shall furnish cars in accordance with the aforesaid notice from the Seller, subject to the exceptions hereinafter stated. In case, however, it shall fail to do so, the Seller may, at its option and upon twenty-four hours' notice, to the extent of such failure, deliver the coal at such delivery points in its own cars, and the Buyer shall accept the same. In that event the Buyer shall pay to the Seller for the use of such cars, mileage at the usual rates, and in addition for each car the sum of four dollars for every day until such car shall be returned to the Seller. In case such failure by the Buyer to furnish cars shall continue fifteen days, the Seller may, at its option, immediately terminate this contract, by notice in writing to the Buyer, subject, however, to the exceptions hereinafter stated.

In order to preserve the identity of the business of the Seller at tide-water, as above stated, the Buyer shall assume and perform all outstanding contracts, of the Seller for delivery at tide-water points; during the continuance of this contract the Buyer shall employ as its agents at the City of New York for the sale at New York tide-water of the coal delivered to it hereunder by the Seller persons who shall be satisfactory to the Seller; the Buyer shall continue the use of the Seller's trade name for all coal delivered under this contract and resold at tide-water points, using such trade name in all advertisements of such coal and in all contracts for the sale of the same; shall use all other reasonable and practicable means for preserving the identity of the Seller's busi-
ness at tide-water, and shall not ship the coal covered by
281 this agreement by way of Newburg. The Buyer shall, on or before the fifteenth day of each month, deliver to the Seller a statement of the average price received during the preceding month for each size of the coal covered by this contract and sold at New York tidewater.

Second. The Buyer shall pay and the Seller shall accept (in addition to the lateral charges hereinafter prescribed) the following prices for all coal which the Seller may deliver pursuant hereto when

prepared in accordance with the standard hereinafter set forth, and delivered on cars at said delivery points.

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide water points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal fifty (50) per cent of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50), the proportion paid the Seller shall be increased one (1) per cent until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportion paid the Seller shall be increased two (2) per cent until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportion paid the Seller shall advance one (1) per cent for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned, provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) per ton at tide, the price shall be increased five (5) cents per ton; but the Buyer shall have the option to decline to take these sizes smaller than Buckwheat No. 1 in excess of the proportion marketed from the Buyer's own colleries and operations.

282 If at any time through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent when the general average f. o. b. at tide is two dollars ($2) per ton or less shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size of coal from the Wyoming region sold during the preceding month and the amount realized therefor respectively by the Buyer at tide; the accountant shall have access, if he desires, to the books and papers upon which such statement is founded, and he shall each month make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom

they shall be accepted, subject to the right of appeal to the arbitrators hereinafter mentioned, in the settlement between the Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to the Buyer and Seller.

When the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commission, demurrage or any other charges.

Fourth. Payments shall be made monthly in cash. A partial payment of at least One Dollar ($1.00) per ton shall be made on or before the twelfth of each month, and the balance on or before the twentieth, for all coal delivered by the Seller under this contract during the preceding calendar month. If default shall be made by the Buyer in any payment aforesaid the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but, in case of a like default of payment in the next succeeding month, this contract may be peremptorily terminated by the Seller without such notice.

283 Fifth. All coal delivered under this contract shall be inspected by the Seller at the breaker similarly to its product generally and shall conform to the following standard, viz:

A. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

B. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

Broken, through a mesh 4″ square and over a mesh 2¾″ square.

Egg, through a mesh 2¾″ square and over a mesh 2⅛″ square.

Stove, through a mesh 2⅛″ square and over a mesh 1⅜″ square.

Chestnut, through a mesh 1⅜″ square and over a mesh ¾″ square.

Pea, through a mesh ¾″ square and over a mesh 7/16″ square.

Buckwheat No. 1, through a mesh 7/16″ square and over a mesh ¼″ square.

Buckwheat No. 2 or Rice, through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor, respectively, a larger proportion of any smaller sizes than is usually present in good merchantable coal. Neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes. Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent of Buckwheat No. 1, nor Pea coal more than fifteen (15) per cent of Buckwheat No. 1 and five (5) per cent of Rice, nor Buckwheat No. 1 more than fifteen (15) per cent of Rice.

C. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz:

Broken, one (1) per cent; Egg, two (2) per cent; Stove, four (4) per cent; Chestnut, an average of not more than five (5) per cent,

and at no time to exceed a maximum of seven (7) per cent; Pea, ten (10) per cent; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone, containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent, viz:

Broken, two (2) per cent; Egg, two (2) per cent; Stove, three (3) per cent; Chestnut, five (5) per cent; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

284 Sixth. If the conditions of the trade shall at any time require a different standard of preparation, or of sizes, from the aforesaid, the Seller shall prepare the coal so as to conform to such different standard. The Seller shall, however, be proportionately reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitrators hereinafter mentioned.

Seventh. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party, the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car.

Eighth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal delivered by the Seller under this contract shall be weighed upon scales at the mines, and the amount of coal in each car shall be determined by the certificate of the weight-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Seller.

Ninth. The Buyer shall pay as a lateral charge for the transportation of said coal from the mines and the delivery of the same to the Buyer in the yard of the Seller at Carbondale on such tracks as it may designate for the purpose the sum of twenty-five (25) cents per ton, and for the transportation of said coal from the mines and the delivery of the same to the Buyer in the yard of the Seller, at Honesdale, on such tracks as it may designate for the purpose the sum of forty (40) cents per ton, and as an additional lateral charge the further sum of five (5) cents per ton for any and all coal loaded into box cars at the mines.

The Buyer shall furnish at the points hereinafter specified such number of empty cars for the loading and transportation of the coal as shall supply the daily requirements of the Seller, which
285 cars the Seller shall receive at said points and deliver the same loaded as herein provided. No mileage shall accrue to the Buyer for loaded or empty cars between the mines and the respective points of delivery, and no charge shall be made by the

Seller for the movement of empty cars, and such empty cars may be furnished at either of the said points of delivery, or at the yard of the Seller at Yatesville, or at the yard of the Erie and Wyoming Valley Railroad Company at Pleasant Valley Junction near Avoca, from time to time, provided, however, that approximately two-thirds of the empty cars shall be delivered at Honesdale and not more than one-ninth thereof at Yatesville and Pleasant Valley Junction combined.

Tenth. If, by reason of any strikes among the employees, or any injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the railway company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining, transportation or marketing of the said coal, either party respectively shall be unable to furnish or take the coal or furnish or take empty cars as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability. Every reasonable effort shall be made to resume operations at the earliest practicable period.

Eleventh. In case of any disagreement between the parties hereto as to the true construction or meaning of any of the provisions of this contract, or as to the rights of either party hereunder, or any claim by either party arising hereunder, which the parties fail to adjust between themselves, such matter or matters of disagreement shall be arbitrated by three disinterested persons as herein provided. Each party shall cho-se one arbitrator, and the two thus chosen shall choose the third. In case either party shall refuse or fail to appoint an arbitrator within ten days after receiving written notice from the other party of the matter which it desires to submit to arbitration, or in case two arbitrators shall have been appointed, but shall fail to agree, either party hereto may apply to any Judge of the Court of Common Pleas of Lackawanna County, Pennsylvania, upon eight days' written notice to the other party for the appointment of a second or third arbitrator, as the case may be.

286 The arbitrators appointed shall give the parties ten days' written notice of the time and place of hearing, and shall proceed without delay to hear the proofs and allegations of the parties, or of such party as may appear before them, and determine the questions and matters submitted to them for arbitration, and make their decision and award in writing. And, in case either party refuses or fails, upon said written notice given by such arbitrators, to produce its proofs, or present its case before them, the arbitrators may determine such questions and matters so submitted to them, upon proofs presented by the other party and such proofs as they may procure.

The decision and award of the majority of the arbitrators, when made in writing and signed by them, shall in every case be final and conclusive and obligatory upon the parties hereto, and each party hereto agrees to abide by, and comply with, every such decision and award.

The determination and award of such arbitrators, or a bona fide

effort to obtain it, shall be a condition precedent to any right of action with respect to any matter hereby agreed to be submitted to arbitration, and no right of action, either at law or in equity, shall exist or be invoked with respect to any such matters until after the submission of the same to arbitration, as herein provided, and then only to enforce the decision and award of such arbitration, except in case of a bona fide attempt to obtain such arbitration, which attempt shall have failed through no fault of the party so resorting to litigation.

Twelfth. If at any time the average f. o. b. price at tidewater for sizes of coal larger than pea coal shall be less than three dollars and fifty cents per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents per ton: provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer, and if any question arises as to the price being less than three dollars and fifty cents, it shall be submitted to the arbitrators aforesaid.

Thirteenth. This contract shall take effect on July 1, 1902, and shall continue thereafter in full force and effect for a period of five years, terminating on July 1, 1907.

287 In witness whereof, each of the parties hereto has caused its corporate seal to be hereunto set, and attested by its Treasurer and Secretary respectively, and this instrument to be subscribed by its President the day and year first above written.

THE DELAWARE AND HUDSON COMPANY,
By R. M. OLYPHANT, *President.*

Attest:
[Seal of The Delaware and Hudson Company.]
C. A. WALKER, *Treasurer.*

HILLSIDE COAL AND IRON COMPANY,
By F. D. UNDERWOOD, *Its President.*

Attest:
[Seal of Hillside Coal and Iron Company.]
J. A. MIDDLETON, *Secretary.*

The foregoing contract is hereby extended by mutual agreement, upon the same terms, until the first day of April, 1908.

Dated April 19, 1907.

THE DELAWARE AND HUDSON COMPANY,
By L. F. LOREE, *President.*

Attest:
[Seal of D. & H. Co.]
C. A. WALKER, *Treasurer.*

HILLSIDE COAL AND IRON COMPANY,
By G. A. RICHARDSON, *Vice-President.*

Attest:
[Seal of H. C. & I. Co.]
DAVID BOSMAN, *Secretary.*

288 For valuable consideration, The Erie Railroad Company hereby approves the above contract as in substitution for any subsisting arrangements between itself and The Delaware and Hudson Company covering the same subject matter, and guarantees its performance in all respects by the Hillside Coal and Iron Company.
Dated June 30, 1902.

ERIE RAILROAD COMPANY,
By F. D. UNDERWOOD, *Its President.*

Attest:

[Erie R. Co. Seal.]

J. A. MIDDLETON, *Secretary.*

The Erie Railroad Company hereby renews until April first, 1908, its agreement of guaranty subjoined to the foregoing contract, in consideration of the foregoing extension thereof.
Dated April 19th, 1907.

ERIE RAILROAD COMPANY,
By G. A. RICHARDSON,
Vice-President.

Attest:

[Erie R. Co. Seal.]

DAVID BOSMAN, *Secretary.*

289 [*Answer Elk Hill C. & I. Co. Filed January* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY, THE ELK HILL COAL AND IRON COMPANY et al., Defendants.

The Separate Answer of the Elk Hill Coal and Iron Company, One of the Defendants Above Named, to the Petition of The United States of America, Plaintiff.

This defendant, one of the parties named as defendants in the above entitled case, now and at all times hereafter saving
290 to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition, and the amendment thereto, contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for it to make answer to, answering, says:

I.

This defendant does not know, and cannot set forth as to its belief or otherwise, whether or not it is alleged or is the fact that the

averments contained in the first, second, third, fourth, fifth and sixth paragraphs of the petition of the plaintiff are true.

II.

This defendant denies the averments of the seventh paragraph of the petition of the plaintiff in so far as it is charged thereby with having done or performed any act or thing in violation of law; and it further denies that it is under contract to sell its coal to any railroad company whatsoever or that it has heretofore agreed to deliver, on the cars at its breakers, to one or the other of the defendant carriers or its subsidiary coal companies, as the case might be, all the anthracite coal mined from any of its mines now opened and operated or which it might open and operate.

This defendant avers that the only contract it has for sale of any coal it may produce, is the contract hereinafter next mentioned and referred to, but this defendant denies that such contract provides for deliveries or shipments to be made from time to time, as called for by the purchaser, but on the contrary said contract provides
291 that the purchaser shall take the same, as and when it shall be produced by the defendant.

For many years prior to March 1st, 1902, this defendant was engaged in the mining, preparation and sale of anthracite coal, and one of its mines adjoined certain lands owned by the Pennsylvania Coal Company, which had been undeveloped by and were not connected with any colliery or operation of that company, and underlying which said lands are the veins of coal defendant was mining on its own lands.

That by agreement dated March 1st, 1902, said Pennsylvania Coal Company granted to this defendant the right to extend its workings to and mine and remove from a portion of said adjoining lands, which are particularly described in said agreement, anthracite coal in amounts sufficient to produce, when prepared, 1,500,000 tons of sizes above the size known as Pea Coal, and defendant agreed to mine and remove the same in quantities sufficient to produce at least 50,000 tons per annum, above the size of Pea Coal, this defendant agreeing to pay therefor certain royalties, as in said agreement set forth; and as part of said agreement, and as one of the terms and conditions thereof, defendant agreed to sell and deliver to the said Pennsylvania Coal Company, on cars to be furnished by that Company, at the breaker of this defendant, wherein such coal shall be prepared, one-half of all the coal that should be mined and removed by defendant from said lands of the various sizes as produced in the preparation thereof through the said breaker, provided that the said Pennsylvania Coal Company should furnish cars at said breaker for the said coal as the same should be so produced, for which coal, when delivered to and taken by said Pennsylvania Coal Company, it agreed to pay this defendant certain rates and prices as in said agreement provided.

292 A copy of said agreement is hereto attached, and marked "Exhibit A," and defendant prays that the same shall be taken and read as a part hereof.

III.

This defendant denies that it has entered into an agreement, scheme, combination or conspiracy, by virtue whereof it and other corporations and persons named in the said petition and the amendment thereto, have acquired the power to control, regulate, restrain and monopolize, and have controlled, regulated, restrained and monopolized not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States, and its prices and sale throughout the several States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed, and the prices thereof to consumers greatly enhanced; and this defendant further denies that it, together with the other defendants in said petition and amendment named, or some or any of them, engaged in and became parties to the acts, schemes and contracts particularly set forth or referred to in sub-divisions (*a*), (*b*), (*c*), (*d*) and (*e*) of said paragraph seventh of the petition, or any other acts, schemes and contracts, in violation of an Act of Congress, approved July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said petition material to be answered, according to its best knowledge and belief, humbly prays this honorable Court to enter its decree, that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained, and for such
293 & 294 further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

THE ELK HILL COAL AND IRON COMPANY,
By T. P. FOWLER, *President.*
JAMES E. BURR,
Solicitor for the Elk Hill Coal and Iron Company, Defendant.

295 EXHIBIT A.

This Indenture, made in duplicate this first day of March, A. D. 1902, between the Pennsylvania Coal Company, a corporation organized under the laws of the State of Pennsylvania (hereinafter called the Pennsylvania Company), party of the first part, and the Elk Hill Coal and Iron Company, a corporation also organized under the laws of said State (hereinafter called the Elk Hill Company), party of the second part:

Whereas, the Elk Hill Company is the owner of certain lands, known as the "Carter Estate," situate in the First Ward of the City of Scranton, County of Lackawanna and State of Pennsylvania, upon and under which said Company is engaged in mining anthracite coal, the operation being generally known as "Richmond No. 3"; and

Whereas, the Pennsylvania Company is the owner of the lands hereinafter described adjacent on the south and east to the said lands of the Elk Hill Company, which lands are underlaid with the same veins of coal worked by the Elk Hill Company in its said lands, and the Elk Hill Company desires to extend its mining operations to said lands of the Pennsylvania Company and remove coal therefrom to the amount and extent hereinafter set forth; and

Whereas, the parties hereto deem it to their mutual advantge to extend said mining operations and to open the said lands of the Pennsylvania Company, as hereinafter provided:

Now, therefore, this Indenture Witnesseth:

Article First.

First. That the Pennsylvania Company, in consideration of the premises and of the rents and royalties hereinafter reserved and the covenants and conditions hereinafter contained, has granted, bargained, sold and conveyed, and by these presents doth grant,
296 bargain, sell and convey to the Elk Hill Company, the right to extend its workings in and under said lands of the Pennsylvania Company, which are described as follows, to wit: Beginning at a stone corner on the easterly bank of the Lackawanna River, it being the northeasterly corner of the Daniel Swarts tract; thence S., 40° 04′ W., 581.1 feet to a stone corner; thence S., 49° 13′ E., 130 feet to a corner; thence N., 69° 45′ E., 4,669 feet (along line of fault or roll, as developed by the workings of the Delaware and Hudson Company in their Dickson and Marvine Collieries 14 ft. vein) to a corner on the northeasterly side line of the Bowman tract; thence N., 49° 06′ W., along said line of the Bowman tract 1,131 feet to a cut-stone corner in the centre of the Olyphant road; thence along lines dividing the property of the Elk Hill Company from the Bowman tract of the Pennsylvania Company S., 56° 57′ W., 230.1 feet to a corner; thence S., 43° 32′ W., 284.2 feet to a cut-stone corner; thence N., 49° 49′ W., 43 feet to a cut-stone corner; thence N., 71° 31′ W., 185 feet to centre of iron bridge across creek; thence N., 85° 54′ W., 125.3 feet to a corner; thence N., 69° 59′ W., 55 feet to a corner; thence N., 54° 38′ W., 38 feet to a corner; thence N., 40° 12′ W., 64 feet to a cut-stone corner; thence N., 31° 06′ W., 138.4 feet to a cut-stone corner; thence S., 55° 19′ W., 374.5 feet to a corner; thence N., 48° 56′ W., 82.5 feet to the centre of the Lackawanna River; thence along the centre of said Lackawanna River (being the division line of the properties of the Delaware and Hudson Company and the Pennsylvania Company) about 2,650 feet to the place of beginning, containing 72.9 acres of land, more or less, and being parts of the Swarts, Biesecker, Mills and Bowman tracts owned by the Pennsylvania Company, and situate in the County of Lackawanna and State of Pennsylvania.

Second. The Elk Hill Company shall have the right to take and remove from the veins in the above-described lands anthracite coal to the amount of one million five hundred thousand (1,500,000) tons of the sizes above Pea coal when prepared, and such further amount of the size of Pea and smaller sizes as may be made only

in the course of mining and preparation of said 1,500,000 tons of sizes above Pea coal, according to the present custom and practice of mining and preparing coal in the Lackawanna coal region;
297 and the Elk Hill Company covenants to pay therefor to the Pennsylvania Company the following sums per ton of two thousand two hundred and forty (2,240) pounds, according to weights ascertained as provided in Article Second hereof when loaded in railroad cars for shipment, to wit: For each ton above the size of Pea coal, forty-five (45) cents; for each ton of Pea coal, twenty-two and one-half (22½) cents; for each ton of the size known as Buckwheat No. 1, eleven and one-quarter (11¼) cents; and for each ton of sizes smaller than Buckwheat No. 1, six (6) cents; the various sizes above specified being described in Article Second of this agreement, and the same allowance for waste shall be made in weighing the coal as is also provided in said Article; the said sums to be paid and the operations of the Elk Hill Company to be conducted and carried on in the manner and upon the terms and conditions following, to wit:

Third. The Elk Hill Company shall extend the mining operations now carried on by it on its said lands, in and under the said adjoining lands of the Pennsylvania Company, and remove all the merchantable coal in all the several veins underlying the same, to the amount aforesaid, according to the ordinary course of mining prevailing in the mining of the same veins in the same locality, leaving such pillars or supports as may be deemed reasonably necessary by the Pennsylvania Company to ensure the safe working of the balance of the property of the Pennsylvania Company, through the openings so made in such veins, whenever the Elk Hill Company shall have taken out the quantity of coal hereinbefore mentioned. And the Elk Hill Company shall have all and every exemption possessed by the Pennsylvania Company from and for any damage to the surface of the above described lands, or any buildings or improvements thereon. As soon as, and whenever the Elk Hill Company shall have taken out said quantity of coal, the Pennsylvania Company shall take over, and the Elk Hill Company shall convey to it, the said Carter lands and all the improvements thereon, the Pennsylvania Company paying therefor the value as of that time of said land and the improvements thereon. If the parties shall be unable to agree upon such value, the same shall be determined by arbitration in the manner hereinafter provided.

298 Fourth. It is further understood and agreed that in case it shall be determined that the Elk Hill Company is unable to mine the said quantity of one million, five hundred thousand (1,500,000) tons of prepared sizes of coal, together with the accompanying quantity of smaller sizes, from the said lands of the Pennsylvania Company hereinbefore described, then the Elk Hill Company shall have the privilege of mining and removing the residue of such coal from the adjoining lands of the Pennsylvania Company, at some point equally available and economical for mining operations, to be designated by the Pennsylvania Company, and upon the same terms and conditions as herein described.

Fifth. The Elk Hill Company shall keep full and accurate accounts of the tonnage removed by it from the said lands of the Pennsylvania Company and shall, on or before the twenty-fifth day of each month, render a statement to the Pennsylvania Company of the amount removed during the preceding calendar month, and at the same time shall pay to the Pennsylvania Company therefor, at the rates and prices hereinbefore fixed. The Pennsylvania Company shall have the right at all reasonable times, by its agents or engineers, to examine said accounts and also to enter, examine and measure the said mining operation and workings of the Elk Hill Company.

Sixth. The mining operations of the Elk Hill Company in the said lands of the Pennsylvania Company, and any improvements made by the former Company, by way of buildings or otherwise, shall be carried on and made in such manner and in or on such portions of said lands, or the lands of the Elk Hill Company, as the Pennsylvania Company may reasonably prescribe, due regard being had both to the economical mining and preparation of the said amount of coal, by the Elk Hill Company, and of the use of such lands, workings and other improvements by the Pennsylvania Company in the future development of its property and the mining and preparation of the coal remaining therein. But the Pennsylvania Company shall not be obliged ultimately to pay, as hereinbefore provided, for any improvements, by way of buildings, breakers or otherwise, unless same shall first have been consented to and authorized by the Pennsylvania Company in writing.

299 Seventh. If the Pennsylvania Company shall determine within one year that it desires to have left in the several veins of coal upon the lands hereinbefore described, a sufficient solid body of coal to support breaker or other colliery improvements that it may desire to erect in the future, it shall designate the location of such solid pillar to be left and the coal shall not be removed therefrom by the Elk Hill Company; but the Pennsylvania Company shall furnish the Elk Hill Company with coal to an amount equal to that left, from some point equally available for its mining operations, in case it shall not be able to obtain the full quantity herein provided for from the remainder of said lands.

Eighth. The Elk Hill Company shall take out and pay for at least fifty thousand (50,000) tons of coal above the size of Pea coal during each year after the first day of April, 1902, from the said lands of the Pennsylvania Company, in as nearly equal monthly quantities as practicable, until the full quantity of one million five hundred thousand (1,500,000) tons above the size of Pea coal shall have been mined, together with the smaller sizes hereinbefore mentioned and provided for.

Ninth. If, however, by mutual agreement between the parties hereto, a breaker shall be erected by the Elk Hill Company on the lands of either party, of a capacity greater than the breaker now in use by the said Company for the preparation of coal mined in said operation, known as "Richmond No. 3," then the minimum annual output by the Elk Hill Company from the said lands of the Penn-

sylvania Company shall be increased to at least seventy-five thousand (75,000) tons of prepared sizes, together with the smaller sizes as above provided.

Tenth. If, in the judgment of the Pennsylvania Company, it shall be necessary for the protection of its property and future workings, to leave a barrier pillar between the present workings of the Elk Hill Company and the workings to be developed in the said lands of the Pennsylvania Company, such pillar shall be made and left three-quarters (¾) on the land of the Pennsylvania Company and one-quarter (¼) on the lands of the Elk Hill Com-
300 pany; but if it shall be determined that it is necessary, or more practicable or economical to make and have such barrier pillar entirely on the lands of the Pennsylvania Company, then the one-quarter (¼) of coal so left in such pillar shall be deducted from the amount of coal the Elk Hill Company is entitled to take out of the lands of the Pennsylvania Company, provided, however, that if at any time the parties agree that it is not essential to safety to leave such pillar, the coal therein in the lands of the Pennsylvania Company shall be taken out by the Elk Hill Company as part of the one million, five hundred thousand (1,500,000) tons hereinbefore granted.

Eleventh. It is understood between the parties hereto that wherever it may be necessary to have barrier pillars between the said lands of the Pennsylvania Company and the lands of the Delaware & Hudson Company, the size and location of such barrier pillars shall be arranged and agreed upon between the Pennsylvania Company and the Delaware & Hudson Company, and the Elk Hill Company shall be bound by such agreement and shall carry out same in accordance with the terms thereof; but nothing in this paragraph contained shall affect the right of the Elk Hill Company to take out from the lands of the Pennsylvania Company the full amount of coal hereinbefore specified.

Twelfth. The Elk Hill Company shall have the right to use, free of charge, for the production of steam at the colliery through which the coal from the said lands of the Pennsylvania Company shall be mined, such an amount of coal below the size of Pea as may be necessary for the said purpose, provided that in case coal from other properties is mined through the same colliery the amount taken from said lands of the Pennsylvania Company shall not exceed the proportion which the output from the said lands of the Pennsylvania Company bears to the whole output from all lands operated through such colliery.

Thirteenth. Merchantable coal is hereby defined to be coal in veins or seams of a like quality and fineness as are customarily worked for the time then being in the region where the said lands of the Pennsylvania Company are situate and which can be mined
301 and prepared for market at a not greater average cost than coal from similar veins of adjacent or neighboring lands is for the time being mined and prepared for market; and if any differences of opinion shall arise as to the merchantable quality of

any coal or veins of coal in the said premises, the questions shall be referred to the Board of Arbitrators hereinafter provided for.

Fourteenth. The Elk Hill Company shall pay all taxes and assessments levied lawfully upon the coal in the said lands of the Pennsylvania Company, and also upon such portion of the surface of the premises as may be taken and occupied by it.

Fifteenth. If by reason of any strikes among the employés of the Elk Hill Company or of any railway companies over whose lines the coal is transported to market, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Elk Hill Company or of said railway companies, or of unavoidable delays or obstructions in the mining or transportation of the said coal, the Elk Hill Company shall be unable to produce the minimum annual output of coal as hereinbefore agreed, the Elk Hill Company shall not be liable for non-fulfillment of this agreement during the period of such disability; provided, every reasonable effort be made to resume operations at the earliest practicable period.

Article Second.

The Elk Hill Company agrees to sell and deliver to the Pennsylvania Company, and the Pennsylvania Company agrees to buy, on cars to be furnished by the Pennsylvania Company, at the breaker through which the coal mined by the Elk Hill Company from the said lands of the Pennsylvania Company shall be prepared, one-half (½) of all such coal, of the various sizes produced through such breaker; such cars to be furnished daily for such one-half of the output, or on alternate days, or equal portions of a week or month as shall be designated by agreement from time to time between the Elk Hill Company and the Pennsylvania Company.

302 The Pennsylvania Company covenants and agrees to pay to the Elk Hill Company for all such coal so sold and delivered by the Elk Hill Company to the Pennsylvania Company the following rates and prices, the Elk Hill Company being designated as the Seller and the Pennsylvania Company as the Buyer, to wit:

First. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent. of the general

average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For Buckwheat No. 2 or Rice the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents' increase in the general average f. o. b. price above One Dollar and Thirty Cents ($1.30) a ton at tide, the price
303 shall be increased five cents per ton, it being understood that the Buyer shall not be obliged to take coal of sizes smaller than Buckwheat No. 2 or Rice.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale or prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

Second. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted in the settlement between the Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage, or any other charges.

Third. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month.

Fourth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be ap-
304 pointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

A. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

B. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

Broken, through a mesh 4″ square and over a mesh 2¾″ square.

Egg, through a mesh 2¾″ square and over a mesh 2″ square.

Stove, through a mesh 2″ square and over a mesh 1⅜″ square.

Chestnut, through a mesh 1⅜″ square and over a mesh ¾″ square.

Pea, through a mesh ¾″ square and over a mesh ½″ square.

Buckwheat No. 1, through a mesh ½″ square and over a mesh ¼″ square.

Buckwheat No. 2 or Rice, through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1 more than fifteen (15) per cent. of Rice.

C. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed the maximum of seven (7) per cent.; Pea, ten (10) per cent; Buckwheat, fifteen (15) per cent.

305 Nor more than the following percentages of bone (containing a proportion of mixed carbon ranging between forty (40) and sixty-five (65) per cent.), viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Fifth. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be settled by arbitration as hereinafter provided. If, by general agreement in the trade changes shall, from time to time, be deemed desirable in the preparation or sizing of coal, the Seller shall conform to such general agreement. All coal shall be inspected at the breaker.

Sixth. When the inspector is making a test for impurities in the coal he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is

unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. It at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove, as far as practicable, cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer. And in case any coal is condemned
306 and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Seventh. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed upon scales at mines, tested and approved by the Buyer and by the weighmasters approved by the Buyer, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eighth. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from said colliery.

Ninth. If, by reason of any strikes among the employés of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railroad Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Tenth. The percentage of the various sizes of coal to be delivered under this article shall be that produced by the natural run of the breaker in use by the Seller.

Eleventh. In case the prevailing prices paid to the individ-
307 ual operators for anthracite coal at the mines shall be generally advanced above the prices hereinbefore fixed, then the Buyer shall pay to the Seller such advanced prices.

Article Third.

First. In case the Elk Hill Company shall fail to pay the rents and royalties hereinbefore specified at the times and in the manner above set forth, or shall fail to comply with any other of the terms and conditions of this instrument, and any such default shall continue for a period of sixty (60) days after the service upon the said Elk Hill Company of written notice specifying such default, this agreement of indenture and all the rights of the Elk Hill Company hereunder shall, at the option of the Pennsylvania Company, forthwith cease and determine and the Pennsylvania Company shall have the right to re-enter and re-possess the lands hereinbefore described, and remove all persons therefrom.

Second. In case of any disagreement between the parties hereto as to the true construction or meaning of any of the provisions of this contract, or as to the rights of either party hereunder, or any claim by either party arising hereunder, which the parties fail to adjust between themselves, such matter or matters of disagreement shall be submitted for arbitration to a tribunal consisting of three disinterested persons, constituted as hereinafter provided.

In case of any such disagreement each party hereto shall choose one arbitrator, and the two thus chosen shall choose the third. In case either party shall refuse or fail to appoint an arbitrator within ten (10) days after receiving written notice from the other party of the matter which it desires to submit to arbitration, and of its appointment of the arbitrator, such party so asking for an arbitration may also appoint the second arbitrator, and the two persons so chosen shall choose the third arbitrator. In the event of the failure of the two arbitrators first chosen to choose the third within ten (10) days after the appointment of the second arbitrator, and his aceptance of such appointment, either party hereto may apply to any
308 Judge of the Court of Common Pleas of Lackawanna County, Pennsylvania, upon eight (8) days' written notice to the other party, for such appointment of the third arbitrator.

The tribunal so constituted shall give ten (10) days' written notice of the time and place of hearing the parties, and shall proceed without delay to hear the proofs and allegations of the parties, or of such party as may appear before them, and determine the questions and matters submitted to them for arbitration, and make their decision and award in writing. And in case either party refuses or fails, upon said written notice given by such arbitrators, to produce its proofs, or present its case before them, the arbitrators may determine such questions and matters so submitted to them upon proofs presented by the other party, and such proofs as they may procure.

The decision and award of the majority of the arbitrators, when made in writing and signed by them, shall in every case be final and conclusive and obligatory upon the parties hereto, and each party hereto agrees to abide by and comply with every such decision and award.

It is further agreed that the determination and award of such arbitrators, or a bona fide effort to obtain it, shall be a condition precedent to any right of action with respect to any matter hereby agreed

to be submitted to arbitration, and that no right of action, either at law or in equity, shall exist or be invoked with respect to any such matters until after the submission of the same to arbitration, as herein provided; and then only to enforce the decision and award of such arbitration, except in case of a bona fide attempt to obtain such arbitration, which attempt shall have failed through no fault of the party so resorting to litigation.

Article Fourth.

This agreement shall extend to and bind the successors and assigns of the respective parties hereto.

The Pennsylvania Company doth hereby constitute and appoint J. A. Middleton to be its attorney, and the Elk Hill Company doth hereby constitute and appoint Richard D. Rickard to be its attorney, respectively for it and in its name and as and for its
309 corporate act and deed, to acknowledge this indenture before any person having authority under the laws of the Commonwealth of Pennsylvania to take such acknowledgment, to the intent that the same may be duly recorded.

In witness whereof, each of the parties hereto has caused its corporate seal to be hereunto set, attested by its Secretary, and the signature of its President to be hereunto subscribed the day and year first above written.

PENNSYLVANIA COAL COMPANY,
[SEAL.] By F. D. UNDERWOOD, *President.*

Attest:
J. A. MIDDLETON, *Secretary.*

ELK HILL COAL AND IRON COMPANY,
[SEAL.] By T. P. FOWLER, *President.*
Attest:
R. D. RICKARD, *Secretary.*

310 STATE OF NEW YORK.
County of New York, ss:

I hereby certify that on this first day of March in the year of our Lord 1902, before me, the subscriber, a Notary Public personally appeared J. A. Middleton, the attorney named in the foregoing indenture, and by virtue and in pursuance of the authority therein conferred upon him acknowledged the said indenture to be the act of the said Pennsylvania Coal Company.

Witness my hand and Notarial seal the day and year aforesaid.

[SEAL.] A. L. TRAVIS,
Notary Public Kings County.

Certificate filed in New York County.
My commission expires March 30, 1903.

STATE OF NEW YORK,
County of New York, ss:

I hereby certify that on the first day of March in the year of our Lord 1902, before me, the subscriber, a Notary Public, personally appeared Richard D. Rickard, the attorney named in the foregoing indenture, and by virtue and in pursuance of the authority therein conferred upon him acknowledged the said indenture to be the act of the said Elk Hill Coal and Iron Company.

Witness my hand and Notarial seal the day and year aforesaid.

[SEAL.] A. L. TRAVIS,
Notary Public, Kings County.

Certificate filed in New York County.
My commission expires March 30, 1903.

(Map attached to duplicate original showing lands of each Company described in agreement.)

311 [*Answer St. Clair Coal Co. Filed January* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of The St. Clair Coal Company, which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:—

This defendant has not information sufficient for the formation of a belief as to any of the matters and things alleged and set forth in plaintiff's petition, except as to some of the matters, as
312 hereinafter set forth, alleged in subdivision (*a*) of paragraph VII thereof, and it prays that the same, as far as they may be material, may be strictly proved.

And further answering, it says:—

This defendant admits that, by agreement under seal dated July 12th, 1901, made by and between it and The Philadelphia and

Reading Coal and Iron Company, a corporation of Pennsylvania, it sold, and agreed to deliver, to said The Philadelphia and Reading Coal and Iron Company, on cars at defendant's breaker in Schuylkill County, Pennsylvania, all the anthracite coal thereafter mined from any of defendant's mines then opened or operated, or which defendant might thereafter open and operate, on the lands and mines then operated by the St. Clair Colliery, in Blythe and East Norwegian Townships, Schuylkill County, Pennsylvania, or which might thereafter be operated through said colliery, or other mines that might thereafter be opened by this defendant upon the same premises or other lands tributary thereto which this defendant might thereafter acquire or operate and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, said The Philadelphia and Reading Coal and Iron Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—depending on the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

And this defendant avers that said agreement is, and always has been, what it purports to be, a bona fide agreement for the sale of coal at defendant's breaker in Pennsylvania, made within
313 said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create, or to aid in creating a monopoly in the sale of anthracite coal; but that it was entered into by this defendant solely because, in the exercise of its business judgment, it believed and it still believes that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its

reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] THE ST. CLAIR COAL COMPANY.
By WM. H. TAYLOR, *President.*

Attest:

N. G. TAYLOR, *Secretary.*

J. C. BEDFORD,
Solicitor for Defendant.

314 EXHIBIT A.

This Agreement, made and executed in the city of Philadelphia, Penna., this 12th day of July, Nineteen hundred and one, between The Saint Clair Coal Company (hereinafter called the Seller), party of the first part, and The Philadelphia & Reading Coal and Iron Company (hereinafter called the Buyer), party of the second part, Witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:—

The lands and mines now operated by the St. Clair Colliery in Blythe and East Norwegian Township, Schuylkill County, Pennsylvania, or which may hereafter be operated through said colliery, or other mines that may hereafter be opened by the Seller upon the same premises or other lands tributary thereto which may be hereafter acquired or operated by the seller.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has
315 contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity

shall be determined as of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of White Ash Coal, received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York
316 when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two dollars ($2.00) per ton or less, shall be substituted for the flat

price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to
317 shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than the 8th of each month, a statement of the quantity of each size of each character of coal sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal of each character from the Schuylkill region, and the accountant each month shall make a true average price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be
318 made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4″ square and over a mesh 2¾″ square.
Egg through a mesh 2¾″ square and over a mesh 2″ square.
Stove through a mesh 2″ square and over a mesh 1⅜″ square.
Chestnut through a mesh 1⅜″ square and over a mesh ¾″ square.
Pea through a mesh ¾″ square and over a mesh ½″ square.
Buckwheat No. 1 through a mesh ½″ square and over a mesh ¼″ square.
Buckwheat No. 2 or Rice through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea anl five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

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Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

Nor more than the following percentages of bone [containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.], viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that

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case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

321 Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railway Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz., The President of the Seller Company; the President

of the Buyer company to be the second person; and the Presi-
322 dent for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to the price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

323 In witness Whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

____ ____,

By WM. H. TAYLOR, *President.*

Attest:

[Seal The St. Clair Coal Company.]

N. G. TAYLOR, *Secretary.*

THE PHILADELPHIA & READING COAL AND IRON COMPANY,

By JNO LOWBER WELSH, *President pro Tem.*

Attest:

W. G. BROWN, *Secretary.*

Signed, Sealed and Delivered in the Presence of

W. G. BROWN.

W. H. McEWAN.

324 [*Answer Enterprise Coal Co. Filed January 6, 1908.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of The Enterprise Coal Company, Which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of the matters or things that appear on the face thereof, and particularly the objections thereto that the said petition shows no violation of any statute of the United States, and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is
325 advised it is material or necessary for it to make answer unto, says:

This defendant admits and alleges that it is a corporation duly organized and doing business under the laws of the State of Pennsylvania, with a place of business at Scranton, Penna.

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in the plaintiff's petition, except some of the matters as alleged in subdivision (*a*) of Paragraph VII thereof, and for answer thereto this defendant says:

This defendant admits that by agreement under seal, dated the Seventeenth day of July, 1901 made by and between it and The Philadelphia and Reading Coal and Iron Company a corporation of Pennsylvania, it sold and agreed to deliver to said Philadelphia and Reading Coal and Iron Company on cars at defendant's breaker at or near Northumberland County, Pennsylvania, all the Anthracite thereafter mined from any of this defendant's mines, then opened or operated, or which this defendant might thereafter open and operate on the lands and mines then operated by The Enterprise Coal Company, in Coal and Mt. Carmel Township, Northumberland County, Penna., or which might thereafter be operated through said colliery, or other mines that might thereafter be opened by this defendant upon the same premises, or other lands tributary thereto which might thereafter be acquired or operated by this de-
326 fendant; as well as all coal which should be reclaimed from culm banks on said premises; and that in consideration thereof the said Philadelphia & Reading Coal and Iron Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. rail-

road cars at the breaker; prices per ton for the several sizes of coal to be ascertained by certain named percentages depending on the several respective sizes of the general average free on board price of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement, marked "Exhibit A" is hereto attached which it is prayed may be taken as part of this answer.

The lands and mines occupied by this defendant in its mining operations, and which are referred to in the agreement last above recited, are held by this defendant under a mining lease thereof from The Philadelphia and Reading Coal and Iron Company, which, as this defendant is informed and believes, was prior to the execution of said mining lease, the owner thereof in fee.

And this defendant avers that said agreement is and always has been what it purports to be, a bona fide agreement for the sale of coal at this defendant's breaker in Pennsylvania, made within said commonwealth with a corporation of said commonwealth, and to be fully therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and
327 perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce, or stifle competition, or to fix or maintain prices, or to create or aid in creating a monopoly in the sale of anthracite coal, but that it was entered into by this defendant solely because in the exercise of its business judgment, considering the various vicissitudes, risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And this defendant denies all, and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendants may be, by Paragraph VII (*a*) of said petition, charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge of this defendant.

All of which matters this defendant is ready to maintain and prove, as this court shall direct, and prays to be hence dis-
328 missed with its reasonable costs and charges in this behalf most unlawfully sustained.

THE ENTERPRISE COAL COMPANY,
By W. H. GEARHARD, *President.*
WELLES & TORREY,
Solicitors for Defendant.

Attest:

[Seal of the Co.]

A. J. CONNELL, *Sec't'y.*

329 EXHIBIT "A."

This agreement, made and executed in the City of Philadelphia, Penna., this 17th day of July, nineteen hundred and one, between The Enterprise Coal Company (hereinafter called the Seller) party of the first part, and The Philadelphia and Reading Coal and Iron Company, (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells, and agrees to deliver *no* cars at breaker to the Buyer, all the Anthracite Coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:—

The lands and mines now operated by The Enterprise Coal Company, in Coal and Mt. Carmel Townships, Northumberland County, Penna., or which may hereafter be operated through said colliery, or other mines that may hereafter be opened by the Seller upon the same premises or other lands tributary thereto which may be hereafter acquired or operated by the Seller.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily
330 or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accord-
331 ance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of White Ash coal received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. prices reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as
332 in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes or screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent. when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

333 Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than the 8th of each month, a statement of the quantity of each size of each character of coal sold during the preceding month,

and the amount realized therefor by the Buyer at tide on all sales of each size of coal or each character from the Schuylkill region, and the accountant each month shall make a true average price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars,
334 but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction conforms to the following standard, viz:—

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:—
335 Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove through a mesh 2 inches square and over a mesh 1⅜ inch square.

Chestnut through a mesh 1⅜ inch square and over a mesh ¾ inch square.

Pea through a mesh ¾ inch square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2 or Rice through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal and it is especially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1, and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

336 Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse(consisting of slate, rock, and fire-clay), viz:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

Nor more than the following percentages of bone (containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent., viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impuri-
337 ties in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required stand-

ard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

338 Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weighmasters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employés of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railway Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable

339 to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same rgion.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons: One person selected by the Seller, viz: W. L. Connell; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The
340 Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteen. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and if the Board decides that the Seller can not operate its mines without loss on the bases of this contract, and if the Buyer and Seller cannot agree on a modification of this contract then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at the tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to the price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of
341 and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

THE ENTERPRISE COAL —.
By W. H. GEARHART,
President.

Attest:
[SEAL.] A. J. CONNELL, *Secretary.*

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By —— ——,
President pro tem.

Signed, sealed and delivered in the presence of
ALEX. T. CONNELL,
President pro tem.
H. G. BROWN.
W. H. EVANS.

Attest:
[SEAL.] H. G. BROWN, *Secretary.*

342 [*Answer Pine Hill Coal Co, Filed January 6, 1908.*]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING CO., PINE HILL COAL CO. et al., Defendants.

The Separate Answer of the Pine Hill Coal Co., One of the Defendants, to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had been herein set forth, by way of plea or demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto, or as much thereof as it is advised it is material or necessary for it to make answer unto, says:

343 I.

This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's allegations set forth in the plaintiff's petition, except as to some of the matters as hereinafter set forth, alleged in subdivision A of the seventh paragraph thereof.

II.

This defendant admits that by agreement under seal, dated August 17th, A. D., 1901, made by and between itself, a Corporation of the State of Pennsylvania, and The Philadelphia and Reading Coal and Iron Company, likewise a Corporation of said State, it sold and agreed to deliver to the said The Philadelphia and Reading Coal and Iron Company, on cars at defendant's breaker known as the Pine Hill Colliery in Schuylkill County, Pennsylvania, all the coal which it should mine from certain premises located in said county, (the same being lands of said The Philadelphia and Reading Coal and Iron Company) as will more fully appear by the inspection of said agreement, a copy of which is hereto annexed, marked "Exhibit A," which defendant prays may be taken as part of this answer. This defendant, however, avers that the coal deposits controlled and mined by it, are not all included (by at least fifty per cent. thereof) in the agreement above mentioned, and that said agreement does not control its entire output, nor give the party of the second part in
344 said contract the right to purchase all of the output of its plant in said agreement referred to; but on the contrary defendant has heretofore sold, by contract, to other parties than said The Philadelphia and Reading Coal and Iron Company, to wit:

Messrs. Stickney and Conyngham, not parties to this action, a portion of the coal mined from other lands than those in said agreement mentioned, that it has still other coal, in yet other lands which it sells to such parties, and at such prices as it may from time to time elect; and that its shipments are in part made over The Philadelphia and Reading Railroad, in said agreement referred to, and in part over the Pennsylvania Railroad, a corporation not a party to this proceeding.

III.

And this defendant further avers that said contract was entered into in good faith on its part; that the rates of payment therein stipulated are no more than a reasonable compensation for said coal, and no more than the same is and has been fairly worth at this defendant's breaker since the date of its contract; and that as a matter of fact, a large per centage of the coal shipped under said agreement has returned no profit to said defendant; that the method of fixing the rate on the per centage basis was deemed by this defendant as fair to both parties, a method in use for a number of years to determine the wages of miners and in some cases the freight
345 charge. Under the arrangement this defendant is relieved of many of the risks and uncertainties of the coal business and of the trouble and expense of personal attention to sales. These were also moving considerations for the making of said contract.

This defendant further avers that said contract was entered into independently of all other producing companies or persons engaged in the coal trade and without any agreement or understanding with any of them except, as aforesaid, The Philadelphia and Reading Coal and Iron Company with which it contracted, and was without any purpose to stifle competition or to violate or evade the provisions of the Act of Congress approved 2d July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

This defendant further shows to the Court that the contract in question was made between corporations of the State of Pennsylvania, that the sale and delivery of said coal, and performance of said contract, are, and were intended, by the express terms of said contract, to be wholly within the said State.

This defendant submits to the consideration of the Court that the sales of coal under a contract so made, between parties so situated, and to be so performed, is not trade and commerce between states, and is not embraced within the Act of Congress of 2d July, 1890.

This defendant denies any and all matters of unlawful
346 agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit, violated said Act or in any manner offended against the law of the land.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing in the said plaintiff's said bill of complaint contained, material or necessary

for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

PINE HILL COAL COMPANY,
By EDW. B. STURGES, *President.*

THOS. F. WELLS, *Solicitor.*

347 EXHIBIT A.

This agreement, made and executed in the city of Philadelphia, Penna., this 17th day of August, Nineteen hundred and one, between the Pine Hill Coal Company (hereinafter called the Seller), party of the first part, and the Philadelphia & Reading Coal and Iron Company, (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal mined from the lands of the Philadelphia & Reading Coal and Iron Company and any coal mined from other lands that the operators may from time to time elect to ship over the Philadelphia & Reading Railroad prepared and shipped from their colliery known as and called the Pine Hill Colliery or any additions thereto. It is understood and agreed that the entire portion of coal shipped daily over the Philadelphia & Reading as aforesaid shall be in the same proportion of sizes of coal as the daily average productions of sizes of the said Pine Hill Colliery.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable
348 the Seller to work its collieries as many days in each year as other collieries works similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as

of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of White Ash Coal, received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York
349 when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at
350 tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be

substitutted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than the 8th of each month, a statement of the quantity of each size of each character of coal sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal of each character from the Schuylkill region, and the accountant each month shall make a true average price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

351 Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twel-th (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

352 Broken through a mesh 4 in. square and over a mesh 2¾ in. square.

Egg through a mesh 2¾ in. square and over a mesh 2 in. square.

Stove through a mesh 2 in. square and over a mesh 1⅜ in. square.

Chestnut thorugh a mesh 1⅜ in. square and over a mesh ¾ in. square.

Pea through a mesh ¾ in. square and over a mesh ½ in. square.

Buckwheat No. 1 through a mesh ½ in. square and over a mesh ¼ in. square.

Buckwheat No. 2 or Rice through a mesh ¼ in. square and over a mesh ⅛ in. square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is especially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay) viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent. and at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

353 Nor more than the following percentages of bone containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent., viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it

flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall
354 immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaint thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined from the lands of the Philadelphia & Reading Coal and Iron Co. and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and in case any coal is condemned and rejected by the inspector on account of its preparation the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct,
355 such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railway Company or Companies by which the coal is transported to market, or of

either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz.: William A. Cochrane; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

356 The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton; then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the Permanent Arbitration Board.

357 Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Signed, Sealed and delivered in the presence of

THE PINE HILL COAL CO.,
By EDWARD B. STURGES, *President.*

Attest:

[Corporate Seal.]

F. E. PLATT, *Secretary.*

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By GEO. F. BAER, *President.*

Attest:

[Corporate Seal.]

H. G. BROWN, *Secretary.*

358 [*Answer Buck Run Coal Co. Filed January* 2, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of the Buck Run Coal Company, Which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for
359 answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:—

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in plaintiff's petition, except some of the matters alleged in subdivision (*a*) of paragraph VII thereof; and for answer thereto this defendant says:—

That it is a corporation organized under the laws of Pennsylvania by Letters Patent, dated June 1, 1901, granting it the right to mine,

prepare and sell coal, with its principal office at the village of Rohrersville, in Foster Township, Schuylkill County, Pennsylvania.

This defendant admits that by agreement under seal dated 12th March, 1902, made by and between it and the Philadelphia and Reading Coal and Iron Company, a corporation of Pennsylvania, it sold, and agreed to deliver, to said Philadelphia and Reading Coal and Iron Company, on cars at defendant's breaker at Rohrersville, in Schuylkill County, Pennsylvania, all the anthracite coal thereafter mined from any of defendant's mines then opened or operated, or which defendant might thereafter open and operate, on the lands and mines then operated by the Buck Run Coal Company, in Foster Township, Schuylkill County, Pennsylvania, and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, said Philadelphia and Reading Coal and Iron Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—
360 depending on the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

And this defendant avers that said agreement is, and always has been, what it purports to be, a *bona fide* agreement for the sale of coal at defendant's breaker in Pennsylvania, made within said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create, or to aid in creating a monopoly in the sale of anthracite coal.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for the defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All of which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed
361 with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] BUCK RUN COAL COMPANY,
By JAMES B. NEALE, *Pres't.*

B. W. CUMMING, JR.,
Solicitor for Defendant.

EXHIBIT A.

This Agreement made and executed in the city of Philadelphia, Penna., this Twelfth day of March, nineteen hundred and two between The Buck Run Coal Co., (hereinafter called the Seller), party of the first part, and The Philadelphia and Reading Coal and Iron Company (hereinafter called the Buyer), party of the second part, Witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz—Parts of Catherine Groh, George Groh, Reed Improvement Company, Jacob Graul, and John Shall, in Rohrersville Valley.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market
362 for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms, or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of white ash coal received at tide points at or near New York, between Perth Amboy and Edge-

water, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size of each character of coal sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal of each character from the Mine Hill South District Schuylkill Region, and the accountant each month shall make a true average

price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

365 Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like defult of payment in the next succeeding month this contract may be preemptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

366 Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove through a mesh 2 inches square and over a mesh 1⅜ inches square.

Chestnut through a mesh 1⅜ inches square and over a mesh ¾ inches square.

Pea through a mesh ¾ inches square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2 or Rice through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1 nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock, and fire-clay), viz:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent, Chestnut, an average of not more than five (5) per
367 cent., at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

Nor more than the following percentages of bone [containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.], viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found
368 by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall

be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery of collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared ac-ording to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on ac-ount of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall *con-* consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. All allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with
369 the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities, or other property of the Railway Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteeenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz., James B. Neale; the Pr ident of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be in-
370 serted in this agreement, or, if not named before its execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid:

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty Cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries her-under until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

371 Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

[SEAL.] By JAMES B. NEALE, *President.*

Attest:

JAMES H. COLLIER,
Secretary Pro Tem.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

[SEAL.] By GEO. F. BAER, *President.*

Attest:

W. G. BROWN, *Secretary.*

Signed, Sealed and Delivered in the Presence of
H. A. WALLACE.
W. EWAN.

372 [*Answer Clear Spring Coal Co. Filed Jan.* 3, 1908.]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

Separate Answer of the Clear Spring Coal Company to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had been set forth by way of plea and demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto, or to as much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's several allegations set forth in the plaintiff's petition, except as to some of the matters as hereinafter set forth, alleged in sub-division A of the seventh paragraph thereof.

373 This defendant states that long prior to the act of Congress, approved 2nd July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," that is to say, on the 12th day of January, 1882, A. McI. De Witt and Joseph L. Cake, predecessors of this defendant, entered into an agreement with the Delaware, Lackawanna & Western Railroad Company, party of the second part, whereby said De Witt and Cake "granted, " bargained and sold unto the said party of the second part, its suc- " cessors and assigns, loaded in the cars of the party of the second " part, upon suitable and convenient side-tracks at the colliery, to be " erected upon the lands" in said agreement described, and situate in the Borough of West Pittston, Luzerne County, and State of Pennsylvania, "all the coal which the parties of the first part (said De Witt " and Cake) have the right to mine and remove" from said lands, as well as from any adjacent lands which the parties of the first part may acquire; the party of the second part to pay for said coal at rates and in accordance with the prices paid the miners for mining the same, and subject to be increased or decreased as the price paid the miners might be increased or decreased, as in said agreement is provided, copy of which agreement is hereto annexed, marked Exhibit A, and which respondent prays may be taken as part of this answer.

And this defendant further says that the interest of said De Witt and Cake in said contract afterwards became duly vested in this defendant, and that by a supplemental agreement between this defend-

ant and said railroad company, dated 21st September, 1901, the said railroad company, in lieu of the prices named in said agreement of 12th January, 1882, to be paid for coal, agreed to pay this defendant certain percentages of the general average free on board prices for coal received at tide points at or near New York, as will more fully appear by inspection of said supplemental agreement, copy of which is hereto annexed, marked Exhibit B, and which respondent prays may be taken also as part of this answer.

374 This defendant further shows to the court that the said agreement of 12 January, 1882, was an executed contract of present sale at the date thereof, and prior to the Act of Congress of 2nd July, 1890, and made by De Witt and Cake to said railroad company of all the coal in place on the lands embraced in the agreement, and that the rates per ton agreed thereafter to be paid was the compensation for mining and preparing said coal and loading same into cars.

This defendant further shows to the court that the contract and supplemental contract aforesaid were made between citizens and corporations of the State of Pennsylvania, were performed and intended by the terms thereof to be performed wholly within the said State, and that the same do not in any sense involve trade and commerce between states, and are not amenable to the Act of Congress of 2nd July, 1890.

This defendant denies any purpose to stifle competition or create monopoly, and denies any and all matters of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit violated said act, or in any manner offended against the law of the land.

All which matters this defendant is ready to maintain and prove as this court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CLEAR SPRING COAL COMPANY.
By CHARLES SCHLAGER, *President.* [SEAL.]

PAUL BEDFORD,
GEO. R. BEDFORD,
Solicitors.

375 EXHIBIT A.

This agreement, made and concluded this 12th day of January, A. D. 1882, between A. McI. DeWitt and Joseph L. Cake, of the Borough of Pittston, County of Luzerne, and State of Pennsylvania, parties of the first part, and The Delaware, Lackawanna & Western Railroad Company, party of the second part.

Whereas, the said parties of the first part have the right to mine and remove all the coal lying and being in, under and upon certain lands situate in the Borough of West Pittston, and county and state aforesaid, under and in virtue of a certain indenture of lease made between R. J. Wisner, N. G. Parke and others, and the said parties of

the first part hereto, bearing date the 10th day of November, A. D. 1881, and recorded in the recorder's office in the said County of Luzerne, in D. B. No. 229, p. 171, etc.

Now This Agreement Witnesseth, that the said parties of the first part, for and in consideration of the covenants and agreements hereinafter contained to be kept and performed by the said party of the second part, and also in consideration of one dollar to them in hand paid by the said party of the second part, at and before the execution hereof, the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said party of the second part, its successors and assigns, loaded in the cars of the said party of the second part, upon suitable and convenient side tracks at the colliery, to be erected upon the lands in said indenture described all the coal which the said parties of the first part have the right to mine and remove from the hereinbefore mentioned leased lands, and should the said parties of the first part acquire the right to mine the coal from adjoining or adjacent lands, the coal thus acquired shall be included in this agreement, if brought through the ways and passages in the aforesaid leased lands
376 and prepared at the colliery to be erected upon the lands in the aforesaid indenture described. To be delivered in the annual quantities following, to wit: During the year A. D. 1883, 75,000 tons of said coal to be delivered, and during the year A. D. 1884, and annually thereafter until all of the coal which the said parties of the first part have the right to mine and take away from the aforesaid leased lands, and from such adjoining or adjacent lands which they may hereafter acquire the right to mine and remove the coal from, 150,000 tons of said coal shall be delivered, of which annual quantities eleven-fourteenths shall be delivered in equal daily deliveries, as nearly as may be practicable with an efficient and uniform working of said colliery, between the last day of March and the first day of December, and the residue three-fourteenths between the last day of November and the first day of April in each and every year during the continuance of this agreement (Sundays and the usual holidays excepted).

All of which coal shall be delivered to the said party of the second part in the cars of the said party of the second part in such proportion of the different sizes, viz.: Lump, steamboat, grate, egg, stove and chestnut, and be as free from dirt and slate and other foreign substances, and of as good a quality, and be cleaned and prepared in as perfect a manner as the coal which the said party of the second part may at the time then being produce-, mine-, clean- and prepare- at the collieries of the said party of the second part, known as the Diamond, Hampton, Bellevue and Continental, as to which the general coal agent of the said party of the second part shall decide, and his decision shall be final and conclusive. And in case the person appointed by said general coal agent to inspect said coal shall condemn any of it and order it unloaded, it shall be done by the said parties of the first part as their own expense.

All of the prepared coal, viz.: Grate, egg, stove, small stove

and chestnut, shall be broken by breakers and well screened
377 through screens of sufficient size, which shall not be run at a velocity exceeding one hundred and seventy feet periphery per minute.

All Chestnut coal shall be passed over a square mesh of not less than three-fourths of an inch. And the size of all the prepared coal, and also the steamboat coal, shall correspond with those made by the said party of the second part for the time then being at their aforesaid collieries.

And the said parties of the first part covenant and agree as aforesaid to provide and keep in such good order and condition as the superintendent of the railroad of the said party of the second part may direct, at their own expense, all side tracks from the main line or branches of the Bloomsburg division of the railroad, of the said party of the second part, to the colliery to be erected upon the aforesaid leased lands, and at and about said colliery shall provide and keep in like good order all necessary tracks for the convenient transaction of the business to be there done in fulfillment of this agreement. And that all of the switching and removing of cars necessary to be done from the time they are delivered by the said party of the second part, upon tracks prepared for the standing of empty cars until they are loaded, weighed and placed in a proper and convenient position to be taken away, shall be done by and at the expense of the said parties of the first part, in doing which no damage shall be done to the cars, and in loading and placing them upon the tracks from which the said party of the second part is to take them, and they shall be so arranged that the cars containing the same size of coal shall be together so far as the same can reasonably be done.

And the said parties of the first part further agree, as aforesaid, to furnish and put up at a proper and convenient place at said colliery a good and sufficient scale, to be approved by the
378 general coal agent of the said party of the second part, for the purpose of weighing said coal as hereinafter provided.

And the said parties of the first part hereby further covenant and agree that they will well and truly keep and perform all and singular the covenants and undertakings in the said lease between the said parties of the first part and R. J. Wisner, et al. contained, to be by them kept and performed, and upon any neglect, failure or refusal so to do will forthwith notify the said party of the second part of such neglect, failure or refusal, to the end that the said party of the second part may take possession of the said leasehold and premises in the manner hereinafter provided for, and in case the said parties of the first part hereto fail to pay the rents and royalties under the said lease with R. J. Wisner et al., the said party of the second part shall have the right, at their option, to pay the same out of moneys due or to become due under the terms of this agreement.

And the said party of the second part on their part, in consideration of the sale to them of said coal, and of the covenants and agreements hereinbefore contained to be kept and performed by the

said parties of the first part, do covenant and agree to and with the said parties of the first part (the said parties of the first part keeping and performing the covenants and agreements hereinbefore contained on their part) deliver upon the tracks to be provided at said colliery, as hereinbefore agreed, cars for the reception of said coal, with as much regularity as their business at other collieries and their sales of coal will admit of. It being distinctly understood and agreed that the said party of the second part shall not be obliged to deliver to the said parties of the first part cars for the reception of said coal to any greater or further extent than the quantity of coal which the said parties of the first part by this agreement agree to deliver bears to the whole quantity of coal by the said party of the second part for the time then being mined, purchased and
379 transported for other parties, as to which the general coal agent of the said party of the second part shall decide, and his decision shall be final and conclusive.

And the said party of the second part will receive and pay for said coal at the rates and in accordance with the scale following, to wit: When the average price paid by the said party of the second part to the miners employed at their aforesaid collieries shall be seventy-two and fifty-seven one-hundredths of a cent per ton, they shall pay to the said parties of the first part one dollar and eighty cents per ton for the coal delivered, as hereinbefore provided, and whenever and as often as the aforesaid average price paid by the said party of the second part to the miners at their aforesaid collieries shall be increased or decreased the price paid the said parties of the first part for coal delivered as aforesaid shall be increased eight and one-half cents per ton for every five cents per ton of increase paid to the miner, and shall be decreased eight and one-half cents per ton for every five cents per ton of decrease paid to the miner, and so in proportion to any greater or lesser increase or decrease to or from the aforesaid average price paid the miners at said collieries, the price now paid the miners is less than the said seventy-two and fifty-seven one-hundredths of a cent; and if at any time any question shall arise or any difference of opinion exist between the parties hereto as to any increase to or decrease from said seventy-two and fifty-seven one-hundredths of a cent per ton paid the miners at said collieries, the books and accounts as kept in the office of the general coal agent of the said party of the second part at Scranton, shall be referred to and be decisive as to any such question or difference of opinion.

The payments for coal under this agreement shall be made at the office of the said party of the second part in the City of New York, in currency, by the 15th day of each month, for the coal delivered during the preceding month.

380 And the said parties hereto do mutually covenant and agree, each to and with the other, that the coal delivered under this agreement shall be weighed by a person employed by the said party of the second part, upon scales to be provided by the said parties of the first part, as hereinbefore agreed, subject to being re-

weighed upon any of the scales of the said party of the second part, if their general coal agent shall desire it.

That in weighing said coal an allowance shall be made sufficient to compensate for ice or snow that may be on the coal or cars, and for wet coal, and any number of pounds in the weight of a car of coal less than one hundred pounds shall not be counted, and any fractional part of a hundred pounds in the weight of a car shall be counted as one hundred pounds in deducting the weight of the car. The account of such weights to be open to the inspection of the said parties of the first part.

That the said party of the second part shall be entitled to the use free of charge of so much land at or near the said colliery to be erected upon the aforesaid leased lands, as they may desire for a repair shop, or for any other purpose connected with said business, with the right to remove said buildings or improvements erected thereon at the pleasure of the said party of the second part.

That the said party of the first part shall at their own expense erect and maintain a suitable scale house, with an office therein for the use of the weighmaster employed to weigh said coal.

And if in consequence of a strike among the employees of either of the parties hereto (even though such strike should be caused by the reduction of wages), or of the breaking of machinery, destruction by fire or otherwise of breakers or other buildings, or of interruptions, hindrances or delays to transportation or other
381 disabilities in mining or transporting said coal to market, which may occur without the connivance, consent or neglect of the respective parties, either party shall be prevented from fully performing the foregoing agreement in respect to the delivery or receiving the said coal, the deficiency thereby caused shall subject to the provisions hereinbefore contained, to the extent of the ability of the said parties respectively to deliver, receive and transport said coal, be made up, and neither party shall, in consequence of any such failure to deliver or receive the said coal, be considered as having violated this agreement, but if in any year the said parties of the first part shall fail to deliver between the last day of March and the first day of December eleven-fourteenths of the quantity hereinbefore agreed to be delivered in such year, then the said party of the second part shall be bound to take during the other four months of such year only three-fourteenths of such quantity of coal as the said parties of the first part shall have during the preceding eight months delivered eleven-fourteenths of.

That if in consequence of any fault occurring in said mines it shall thereby become impracticable to mine and deliver the quantity of coal hereinbefore named, then in such case the said parties of the first part shall be released from liability for such non-delivery unless the said party of the second part shall elect to have the extent of such fault further proved at their own cost and expense, the amount of such expenditure shall be refunded by the said parties of the first part to the said party of the second part, provided said

[illegible]nditure shall not exceed three thousand dollars, unless mutually understood and agreed to by both parties to this agreement.

A Ton under this agreement shall be 2240 pounds of coal as weighed after it is cleaned, prepared and loaded in cars for transportation to market.

382 And if the said parties of the first part shall, except for the causes hereinbefore mentioned, fail to mine and deliver to the said party of the second part the coal as hereinbefore by them agreed to be mined and delivered, then in that case the said party of the second part shall have the right to take, have and to hold the possession of the lands described in the aforesaid indenture, and also the rights and privileges which the said parties of the first part may hereafter acquire in adjoining or adjacent lands, together with all and singular the slopes, shafts, breakers, machinery, railroads, fixtures and improvements and materials on hand upon, in and under the lands in the said indenture described, and such adjoining or adjacent lands, together with all property of every description used or connected with the mining operations carried on in or upon said lands, and to use and enjoy the same for the purpose of and to mine and take away for their own use the coal which the said parties of the first part have the right under the aforesaid indenture, and from such adjoining or adjacent lands as they may hereafter acquire the right to mine and take away, they, the said party of the second part, paying to the parties thereto entitled the rents or royalties which the said parties of the first part are bound to pay under the said indenture, and the said parties of the second part, in addition to paying the said rents or royalties, shall also, if they take possession of said properties, pay the said parties of the first part the sum of one cent per ton on all coal mined and delivered while the said party of the second part shall be in possession of said mines and the improvements thereon for the use of the same, provided the same is of sufficient capacity to mine and prepare one hundred and fifty thousand tons per annum, and if of less capacity than one hundred and fifty thousand tons per annum the price to be paid the said parties of the first part for the use of the mines and improvements as aforesaid shall be proportionately reduced.

383 And in case the parties of the first part fail to comply with any of the covenants or agreements herein contained, the said parties of the second part shall have the right to take possession of the rights and property conveyed by the said indenture to the said parties of the first part, and in such case, for that purpose, we, the said parties of the first part hereby authorize and empower any attorney of the Court of Common Pleas of Luzerne County, Pennsylvania, to appear for us in any action of ejectment brought by the party of the second part against us for the said property, and confess judgment in such action against us in favor of the said party of the second part for the said land on which said judgment a writ of possession may at once be issued and the said rights and property delivered to said plaintiffs in said action, provided that before the entry of such judgment in ejectment the said party of the second part, by its general coal agent, shall give 30

days' notice in writing to the said parties of the first part of the intention to enter judgment, such notice to be served personally on either of the said parties of the first part, or left at the place of business of the said party or parties for the time being carrying on the mining operations under said lease, within which time the parties of the first part may remedy such default and comply with the covenants and agreements herein contained, and thus prevent the entry of such judgment.

That all and singular, etc.

In witness whereof, etc.

ARCHIBALD McI. DE WITT. [SEAL.]
JOSEPH L. CAKE. [SEAL.]
THE D., L. & W. R. R. CO.,
By SAM SLOAN, *President.*

384 EXHIBIT B.

Whereas, by an agreement dated the 12th day of January, A. D. 1882, De Witt and Cake, of Pittston, Luzerne County, Pennsylvania, granted, bargained and sold to the Delaware, Lackawanna and Western Railroad Company all the coal which they had the right to mine and remove from the lands described in that certain indenture of mine lease from R. J. Wisner, et al., dated the 10th day of November, A. D. 1881, as well also all the coal which they could thereafter acquire from adjoining lands which could be worked in connection with their mine operations on the lands aforesaid, except coal sold at retail and to its employees as therein provided.

And whereas, the said indenture of mine lease, and all the messuages and rights therein with the appurtenances, and all their estate, right, title, term of years, claim and demand whatsoever, of, in, to or out of the same, and also the aforesaid contract with the Delaware, Lackawanna and Western Railroad Company, for the purchase of the coal in the mines as aforesaid, have since become vested in the Clear Spring Coal Company, a corporation duly organized under the laws of the State of Pennsylvania.

And whereas, the Delaware, Lackawanna and Western Railroad Company has agreed in lieu of the prices in said agreement of the 12th day of January, 1882, and in lieu of any supplemental agreement in relation to the prices to be paid for said coal, to pay the said Clear Spring Coal Company the same prices as it has agreed to pay like shippers of anthracite coal in the Lackawanna and Wyoming Valleys.

Now, therefore, this agreement made this twenty-first day of September, in the year of our Lord one thousand nine hundred and one, between the Clear Spring Coal Company, a cor-
385 poration of the State of Pennsylvania, and the Delaware, Lackawanna and Western Railroad Company, a like corporation, Witnesseth, that for and in consideration of the sum of one ($1.00) dollar, lawful money, unto it well and truly paid by the

Delaware, Lackawanna and Western Railroad Company at and before the execution hereof, the receipt whereof is hereby acknowledged, the said party of the first part, its successors and assigns, doth hereby covenant and agree to and with the party of the second part, its successors and assigns, that it will, in accordance with the terms of that certain agreement dated the 12th day of January, A. D. 1882, deliver all of the anthracite coal which it now has the right to mine or may hereafter acquire, and which can be mined and prepared at the Clear Spring mines or breaker, except coal sold in wagons at retail and to its employees as aforesaid, and the said Delaware, Lackawanna and Western Railroad Company, its successors or assigns, doth hereby agree to pay the following prices for said coal when prepared in accordance with the standard as set forth in the aforesaid agreement, delivered free on board railroad cars at the breaker.

For all sizes above pea coal, 65 per centum of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater.

For pea coal, 50 per centum of the general average free on board prices; for pea coal at said tide points at or near New York when said price is $2.50 per ton or less, and for each advance of ten cents per ton in the said free on board prices above $2.50, the proportion paid the party of the first part shall be increased one per centum until the percentage paid for pea coal reaches 65 per centum.

For buckwheat coal, No. 1, 40 per centum of the general average free on board price at said tide points at or near New York, when the said price is $2.00 per ton or less; and for each advance of
386 10 cents per ton in the said free on board prices the proportionate price paid the party of the first part shall be increased two per centum until the said free on board price reaches $2.50 per ton, after which the proportionate price paid the party of the first part shall advance one per centum for each 10-cent advance in the free on board price above $2.50 per ton, as in the case of pea coal above mentioned; provided, that nothing herein contained shall oblige the said party of the second part to pay for buckwheat No. 1 coal a rate higher than for pea coal.

For all sizes smaller than buckwheat No. 1 the party of the first part shall receive 25 cents per ton free on board railroad cars at the breaker, and for each 10-cent increase in the general average free on board price above $1.30 per ton at tide water, the price shall be increased 5 cents per ton.

It is also agreed that if at any time through changes of sizes of meshes, of screens, or of conditions of trade, the sizes smaller than buckwheat No. 1 shall be marketable at tide water at the same price as buckwheat No. 1, the scale of prices on a basis of 40 per centum, when the general average free on board price at tide water is $2.00 per ton or less, shall be substituted for the flat price at the breaker herein provided for during the continuance of such conditions.

It is further agreed by and between the parties hereto that this contract shall be retroactive in that the payment for all coal purchased by the said railroad company from the said coal company

since the first day of November, A. D. 1900, shall be upon the basis hereinbefore set forth and specified.

Except as herein modified and changed, the said agreement of the 12th day of January, A. D. 1882, is in all respects ratified and confirmed and shall be and remain in full force and effect.

387 In witness whereof, the said parties hereto have caused this agreement to be signed by their respective presidents and their corporate seals hereunto affixed, attested by their respective secretaries, the day and year first above written.

(Thirteen words on second page interlined before signing.)

THE CLEAR SPRING COAL COMPANY,
[SEAL.] By CHAS. SCHLAGER, *President.*

Attest:
W. H. GEARHART, *Secretary.*

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.
[SEAL.] By W. H. TRUESDALE, *President.*

Attest:
FRED F. CHAMBERS, *Secretary.*

388 [*Answer Price-Pancoast Coal Co. Filed Jan. 6, 1908.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
THE READING COMPANY, THE PRICE-PANCOAST COAL COMPANY, et al., Defendants.

The Separate Answer of The Price-Pancoast Coal Company, One of the Defendants Above Named, to the Petition of The United States of America, Plaintiff.

This defendant, one of the parties named as defendants in the above entitled case, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or
389 otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition and the amendment thereto contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for it to make answer to, answering, says:

I.

This defendant does not know, and cannot set forth as to its belief or otherwise, whether or not it is alleged or is the fact that

the averments contained in the first, second, third, fourth, fifth and sixth paragraphs of the petition of the plaintiff are true.

II.

This defendant denies the averments of the seventh paragraph of the petition of the plaintiff in so far as it is charged thereby with having done or performed any act or thing in violation of law; and it further denies that it is under contract to sell any of its coal to any railroad company whatsoever except the contract next hereinafter referred to, or that it has heretofore agreed to deliver, on the cars at its breakers, to one or the other of the defendant carriers or its subsidiary coal companies, as the case might be, all the anthracite coal mined from any of its mines now opened and operated or which it might open and operate or does now operate.

This defendant avers that the only contract, under and pursuant to which it may be obliged to sell and deliver at its breaker, or at any other place, any coal whatsoever, is a certain agreement hereinafter recited, by which, in consideration of a loan of $150,000, made by The Delaware, Lackawanna and Western Railroad Company, to The Pancoast Coal Company, grantor of this defendant, the said Pancoast Coal Company agreed to sell and deliver
390 to the said The Delaware, Lackawanna and Western Railroad Company 2,000,000 tons of merchantable coal.

The said Pancoast Coal Company, a corporation of the State of Pennsylvania, whose mines and other real, personal, and mixed property this defendant acquired by purchase on or about the 23d day of January, 1901, by deed recorded in the office of the Recorder of Deeds in and for Lackawanna County, Pennsylvania, in Deed Book 186, at page 441, &c., did, on the 5th day of July, 1899, enter into an agreement with the said The Delaware, Lackawanna and Western Railroad Company, also a corporation of said State, whereby, in consideration of a loan of one hundred and fifty thousand dollars ($150,000), at that time made to it by said Railroad Company, it agreed to sell, and it did thereby sell, and agreed, for the prices and at the times and in the minimum quantities therein stated, to deliver to said Railroad Company two million tons of merchantable coal, contained in the land in two certain leases therein described, the delivery of which was intended, by the deduction by said Railroad Company of ten cents from the purchase price of each ton of coal delivered at the breaker chutes of said Coal Company as in said agreement provided, to repay to said Railroad Company the said sum of one hundred and fifty thousand dollars ($150,000), with interest at the rate of five per cent. per annum, and to secure said sum by a mortgage which should be first lien upon the property (which mortgage was then given and is still a lien upon the property owned or leased by said Pancoast Coal Company) at the time said loan was made and said agreement was executed and delivered; which mortgage, debt and interest were to be paid as provided in said agreement by allowing the said Railroad Company to deduct the said sum of ten cents per ton on each ton of coal delivered
391 to the said Railroad Company by the said Coal Company, and if the aforesaid quantity of coal should prove insuffi-

cient to repay said sum of $150,000, with all interest thereon, then the said Coal Company should continue the delivery from the coal mined at its said mines such further and additional quantity of said coal as might be necessary, at the rate of ten cents per ton, to pay off the balance due and unpaid on said mortgage, together with all interest thereon. The primary consideration of the agreement was the obligation of the Coal Company to sell and deliver unto the said Railroad Company such a quantity of coal as should be sufficient to, at the rate of ten cents a ton, repay the Railroad Company the sum of $150,000, so as aforesaid advanced and paid, with interest thereon as provided in said mortgage, even though the quantity should exceed the aforesaid 2,000,000 tons; the said mortgage still remains a lien upon the property formerly of said Pancoast Coal Company, and now owned and operated by this defendant, and this defendant assumed and is now carrying out the provisions of said agreement and mortgage as to the sale and delivery to said Railroad Company of a sufficient amount of merchantable coal to pay and liquidate the indebtedness of $150,000, with interest at five per cent. per annum as aforesaid incurred by said Pancoast Coal Company, and assumed by this defendant upon the purchase of the property of the said Pancoast Coal Company as aforesaid, that the deductions at the rate aforesaid, have been made and credited upon the said debt, but the same have not been sufficient to pay and extinguish the said debt in full; a copy of said recited agreement is hereto attached, marked Exhibit A, and this defendant prays that the same shall be taken and read as a part hereof.

III.

392 This defendant denies that it has entered into an agreement, scheme, combination or conspiracy, by virtue whereof it and other corporations and persons named in the said petition and the amendment thereto, have acquired the power to control, regulate, restrain and monopolize, and have controlled, regulated, restrained and monopolized not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States and its price and sale throughout the several States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced, and this defendant further denies that it, together with the other defendants in said petition and agreement named, or some or any of them, engaged in and became parties to the acts, schemes and contracts particularly set forth or referred to in sub-divisions (*a*), (*b*), (*c*), (*d*) and (*e*) of said paragraph seventh of the petition, or any other acts, schemes and contracts, in violation of an Act of Congress, approved July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Wherefore this defendant having fully answered, confessed, traversed, and avoided or denied all the matters in the said petition material to be answered, according to its best knowledge and belief, humbly prays this honorable Court to enter its decree, that this

defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

THE PRICE-PANCOAST COAL COMPANY,
By J. B. DICKSON, *President.*
JAMES E. BURR,
Solicitor for The Price-Pancoast Coal Company, Defendant.

393 EXHIBIT A.

This Indenture, made the fifth day of July, in the year of our Lord one thousand eight hundred and ninety-nine, between the Pancoast Coal Company, a corporation duly organized under the laws of the State of Pennsylvania (hereinafter called the Coal Company), party of the first part, and the Delaware, Lackawanna and Western Railroad Company, a like corporation (hereinafter called the Railroad Company), party of the second part;

Witnesseth, that the said Coal Company, for and in consideration of the sum of one hundred and fifty thousand dollars ($150,000), this day advanced and paid by the said Railroad Company, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Railroad Company, its successors and assigns, two million (2,000,000) tons of merchantable coal, contained in the land embraced in the leases hereinafter described, to wit:

1. The coal under the lands described in a certain lease from Eli K. Price and Joseph Pancoast to Clarence M. Sanderson and Clarence D. Simpson, dated the 29th day of March, A. D. 1881, and recorded in the office for recording deeds in the County of Lackawanna, State of Pennsylvania in Deed Book No. 9, at page 1, &c., containing in the several pieces therein particularly described, three hundred and thirty-five (335) acres and one hundred and thirty-two (132) perches of land; which said lease was duly assigned by the said Sanderson and the said Simpson to the Pancoast Coal Company on the 9th day of June, A. D. 1881; said assignment being recorded in the same office in Deed Book No. 9, at page 262, &c.

394 2. The lease from Joseph B. Townsend et al., executors of the last will and testament of Eli K. Price and Joseph Pancoast, both deceased, and E. B. Sturges, et al., dated 30th day of December, A. D. 1886, and recorded in said recording office in Deed Book No. 75, at page 427, &c., containing one hundred and eight (108) acres of land more or less.

The repayment of the said sum of one hundred and fifty thousand dollars, so as aforesaid advanced and paid, is, in addition to the sale of the coal as aforesaid, to be secured to the said Railroad Company, by said Coal Company, by a mortgage for said sum of one hundred

and fifty thousand dollars, at five (5) per cent. interest. Said mortgage and interest to be paid by allowing the said Railroad Company to deduct the sum of ten (10) cents per ton on each ton of coal delivered to the said Railroad Company by the said Coal Company under the terms of this agreement. And while the aforesaid quantity of coal will, in all probability, be sufficient to repay the said sum, so as aforesaid advanced and paid, together with all interest thereon, as in the said mortgage is to be provided, yet, if, for any reason, it should prove to be insufficient to repay the said sum of one hundred and fifty thousand dollars, with all interest thereon, as in the said mortgage is to be provided, then and in any such case, the said Coal Company shall and will continue the delivery from the coal mined at its mines known and designated as the "Pancoast" Colliery and situate in the Throop Borough, Lackawanna County, Pennsylvania, such further and additional quantity of said coal as shall and may be necessary or required, at the rate of ten (10) cents per ton, to pay off the balance due and unpaid of said mortgage, together with all interest thereon. The primary consideration of this agreement being the obligation of the said Coal Company to sell and
395 deliver unto the said Railroad Company such a quantity of coal as shall be sufficient to, at the rate of ten (10) cents per ton as hereinafter provided, repay the said Railroad Company the sum of one hundred and fifty thousand dollars, so as aforesaid advanced and paid, with interest thereon as provided in said mortgage, even though the quantity should exceed the aforesaid two million tons.

And the said Coal Company hereby agrees, out of the sum of one hundred and fifty thousand dollars, to pay and discharge all present mortgages, liens and encumbrances of all kind whatever, so that the said mortgage of one hundred and fifty thousand dollars shall be the first lien upon the property of the Pancoast Coal Company and its interest in the lands hereinbefore mentioned.

It is agreed that the coal to be delivered under this Indenture shall be broken and run through screens of the size fixed, from time to time, by the said Railroad Company, or its General Coal Agent, and the sizes of the said coal shall, in all respects, be of the sizes made by said Railroad Company at its mines; and said coal shall be thoroughly cleaned and prepared and made free from any foreign substances, and when so prepared, shall be carefully drawn from the breaker chutes into the cars of the said Railroad Company, and when so loaded in said cars, shall be run over the scales to be furnished by the said Coal Company and correctly and particularly weighed. It is further agreed that the said coal shall be weighed by a person employed by the said Railroad Company, and in weighing the same the weighmaster shall make such allowances as are made, from time to time, by said Railroad Company at its mines. The quantity of coal delivered shall be determined by the weights as furnished by said weighmaster. The said coal shall be subject to the inspection of the Coal Inspector of the said Railroad Company, and his decision upon such inspection shall be final and
396 conclusive, and shall he refuse to accept the coal or any part thereof, it shall be returned to the said Coal Company, who

shall thereupon have the same re-cleaned and prepared, and the expense of such new preparation shall be borne and settled by the said Coal Company. And in order to facilitate the business to be done at said mine by said Railroad Company, the said Coal Company shall keep and maintain the railroad tracks and switches leading into and about the said colliery, which are the property of the said Coal Company, in good order and repair, and shall conduct its mining operations in a business and workmanlike manner with a view of obtaining and producing all of the merchantable and marketable coal in the lands described in the aforesaid leases. And the colliery shall be worked regularly and continuously, except for the causes hereinafter mentioned. The minimum annual quantity to be mined and delivered is hereby established at two hundred and twenty-five thousand (225,000) tons of coal of twenty-two hundred and forty (2,240) pounds of cleaned coal to the ton, the weight thereof to be ascertained after the same shall have been loaded into the cars furnished by the said Railroad Company; and the minimum monthly quantity to be mined and delivered is hereby established at fifteen thousand (15,000) tons of coal as aforesaid.

And it is hereby specifically agreed that in no month shall a less quantity than fifteen thousand tons be delivered by said Coal Company or received by said Railroad Company; and in no year shall a less quantity than two hundred and twenty-five thousand tons be delivered by said Coal Company and received by said Railroad Company, unless excused for the causes hereinafter mentioned. Should a strike occur among the employees of either party hereto, even though such strike should be occasioned by the reduction of wages, the said party or parties shall be excused from its obligation to keep and perform the covenants of this agreement during any
397 such interference, if reasonable diligence is exerted to overcome such strike. And in the case of the destruction of the breakers or other buildings, which may interfere with the mining operations of the said Coal Company, the said Coal Company shall be excused from furnishing the minimum annual quantity during such interruption. But said Coal Company shall, without delay, proceed to overcome such interferences. And should the railroad of the said Railroad Company become damaged to such an extent as to prevent the transportation of coal to market, the said Railroad Company, pending such interruption to traffic, shall be excused from furnishing cars and taking such coal as aforesaid.

And the Coal Company doth hereby further agree that until said mortgage, with interest, is fully paid, it will keep the improvements situate upon the lands hereinbefore described, fully insured, with a provision that the loss, if any, arising upon said insurance shall be first payable to the said Railroad Company, as its interest may appear. And it is further agreed between the said parties that should a loss occur whereby monies shall be paid upon any insurance policy upon the improvements situate upon the said premises, the said money shall be used in rebuilding the said improvements.

The said Railroad Company shall pay the said Coal Company for the coal sold and delivered under this Indenture, in manner as

follows, to-wit: for all sizes above pea coal the price to be paid shall be sixty (60) per cent. of the average price received by the Railroad Company for said coal at tidewater; for pea coal forty-five (45) per cent of said average price, and for buckwheat coal thirty-two (32) per cent. of said average price. Said prices to be ascertained monthly from the average monthly sales of the said Railroad Company. And the Coal Company shall be entitled to
398 inspect the books of the Railroad Company at any reasonable times, in order to ascertain the average price as aforesaid.

And it is further provided that if, at any time during the continuance of this contract a higher price or larger percentage of the selling price at tidewater than the price named above is established generally as the price to be paid by the Delaware, Lackawanna and Western Railroad Company, and other corporations of a similar nature, to miners of anthracite coal in the Lackawanna Valley, then in such event, the prices to be paid under this contract shall be increased to conform to such generally established price. Payments for coal shall be made on the sixteenth day of each and every month succeeding the month in which said coal shall have been delivered. The said Railroad Company shall, at each monthly pay day, deduct and retain the sum of ten (10) cents per ton on each and every ton of coal delivered during the preceding month, and apply such sum to, first, the payment of the interest on the principal sum secured by said mortgage, and, second, to the payment of the principal of the said mortgage.

The said Coal Company shall and will pay the royalties stipulated to be paid in the said leases, as and when the same become due and payable, and shall and will pay all taxes assessed against the said leaseholds and premises, which, under the terms of the said leases, they are required to pay.

Should the said Coal Company fail to keep and perform all of the covenants in the said leases mentioned and contained and the covenants herein contained, which are to be kept and performed by the said Coal Company, the said Railroad Company may, at its option, avail itself of all the remedies provided in the said mortgage or bond accompanying the same, and institute proceed-
399 ings to foreclose the said mortgage, or proceed upon the said bond.

The Superintendent of Mining of the said Railroad Company shall decide all matters pertaining to the sizes of coal, mesh of the screens, weights and furnishing of cars and inspection of coal, and his decision shall be final and conclusive.

All and singular the covenants and agreements herein mentioned and contained, which are to be kept and performed by the said parties, respectively, shall inure to the benefit of and be binding upon the successors and assigns of each of the said parties respectively.

In witness whereof, the said Coal Company hath caused this Indenture to be signed on its behalf by its President, and its corporate seal to be hereto affixed, attested by the signature of its Secretary, by virtue of a resolution passed at a meeting of the said Coal Com-

pany for that purpose; and the said Railroad Company hath caused this Indenture to be signed by its President, and its corporate seal to be affixed hereto, attested by the signature of its Secretary, the day and year aforesaid.

THE PANCOAST COAL COMPANY,
(Signed) By C. M. SANDERSON, *President.*

Attest:
E. R. BELLMAN, *Secretary.*
[CORPORATE SEAL.]

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
(Signed) By W. H. TRUESDALE, *President.*
A. D. CHAMBERS, *Asst. Secretary.*
[CORPORATE SEAL.]

400 [*Answer Mt. Lookout Coal Co. Filed Jan.* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907, Sitting in Equity.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY, et al., Defendants.

Separate Answer of The Mt. Lookout Coal Company, Which Has Been Made Party Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition and amended petition herein filed, for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition and amended petition show no violation of any statute of the United States and do not set forth facts sufficient to show any cause for citing
401 this Defendant to appear in this Honorable Court or to give this Court jurisdiction as to this Defendant, for answer thereunto or to so much thereof as this Defendant is advised it is material or necessary for it to make answer unto, says:

This Defendant is a corporation of the State of Pennsylvania, and is engaged in the mining and shipping of coal; that it has no written contract with any person or corporation for the shipment and delivery of its coal; that this Defendant is an utter stranger to all and singular the matters and things alleged and set forth in Plaintiff's petition and amended petition, except some of the matters alleged in sub-division (*a*) paragraph VII, and referred to and made more specific in the amended petition, and for answer to those matters this Defendant says:

That one-half of the coal and product of its mines is sold and

delivered to the Lehigh Valley Coal Company, under a contract dated September 20, 1901, between the Temple Iron Company and the Lehigh Valley Coal Company, which said contract is fully set forth on pages 8 and 9 of the answer of the Temple Iron Company, heretofore filed in this case; that said contract is substantially the same as the contract Exhibit "A" attached to the Plaintiff's original petition filed in this case; that one-half of the product of said mine is sold and delivered to the Delaware, Lackawanna and Western Railroad Company under a verbal contract between this Defendant and the said Company, and is substantially the same as the contract Exhibit "A" attached to the original petition filed in this case.

And this Defendant avers that the said agreements are
402 and always have been what they purport to be, bona fide agreements for the sale of coal at the breaker of the Mt. Lookout Coal Company at or near the village of Wyoming, in the County of Luzerne, and the State of Pennsylvania; that said contracts were entered into by this Defendant in the exercise of its legal right and power to make and perform said agreement in Pennsylvania; that the companies to which it sells and delivers its coal, under the agreements aforesaid, are citizens of Pennsylvania and are doing business in the State of Pennsylvania that said contracts were entered into by this Defendant without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create or aid in creating a monopoly in the sale of anthracite coal, nor were the said contracts entered into for the purpose of restraining trade between the States, but were entered into by this Defendant solely because in the exercise of its judgment, considering the various vicissitudes, risks and uncertainties connected with the marketing of anthracite coal, it was for its best interest and advantage to make said agreements.

And this Defendant denies all and all manner of unlawful combination, conspiracy or confederacy with which it or the other Defendants may be by Paragraph VII (*a*) of said petition or the amendment thereto, charged, without this that any other matter or thing in the Plaintiff's petition or amended petition contained material for this Defendant to make answer to and not herein and hereby well and sufficiently answered, confessed or denied are true to the knowledge of this Defendant.

All of which matters this Defendant is ready to main-
403 tain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most unlawfully sustained.

MT. LOOKOUT COAL COMPANY,
By GEO. L. HOUSER, *Secy.*

WILLARD, WARREN & KNAPP,
Solicitors for the Mt. Lookout Coal Company.

404 [*Answer People's Coal Co. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of The People's Coal Company, Which Has Been Made One of the Parties Defendant in This Proceedings.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of the matters or things that appear on the face thereof, and particularly the objections thereto that the said petition shows no violation of any statute of the United States, and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

405 This defendant admits and alleges that it is a corporation organized and doing business under the general corporation laws of the State of Pennsylvania, having its principal office in the City of Scranton, Pa.

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in Plaintiff's Petition, except some of the matters alleged in Subdivision (*a*,) Paragraph VII, and for answer to those matters it says:

This defendant admits that by agreement dated the 26th day of October, A. D., 1889, made by and between it and The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pensylvania, it sold and agreed to deliver to the said The Delaware, Lanckawanna and Western Railroad Company on cars at its breaker in the City of Scranton, Lackawanna County, Pennsylvania, all the coal, with the exception of retail coal, which could be mined and prepared at its breaker aforesaid; and in consideration thereof the said The Delaware, Lackawanna and Western Railroad Company agreed therein to pay for said coal in accordance with the standard in said agreement set forth and delivered free on board railroad cars at the breaker; the prices per ton for the several sizes of coal to be ascertained by certain named percentages depending on the several respective sizes of the average price received by the said Railroad Company for coal sold f. o. b. cars at Hoboken, N. J., during the month in which said coal was delivered, with certain particular amounts added.

406 A copy of said agreement, marked "Exhibit A" is hereto attached, which it is prayed may be taken as a part of this answer.

A large proportion of the coal mined at this breaker is sold at retail by this defendant; other coal so mined, since the date of the said agreement, has been sold and delivered to The Delaware, Lackawanna and Western Railroad Company under the terms of and at the rates specified in the said agreement, as the same have been from time to time, since then, modified and altered by parol.

A large part of the coal, and all of the surface, including a shaft already constructed, known as the "Oxford Shaft" mined and occupied by said colliery, were prior to 1889 owned by The Delaware, Lackawanna and Western Railroad Company, and upon the 26th day of October, 1889, were leased and conveyed by it to this defendant.

And this defendant avers that the said agreement dated the 26th day of October, 1899 (Exhibit A) is, and always has been what it purports to be, a bona fide agreement for the sale of coal at the breaker of this defendant, in Pennsylvania, made within the said commonwealth with a corporation of said commonwealth, and to be fully therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and perform said agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was e-tered into by this defendant without any plan, purpose
407 or intent to restrain trade or commerce, or stifle competition, or to fix or maintain prices, or to create or aid in creating a monopoly in the sale of anthracite coal, but that it was entered into by this defendant solely because, in the exercise of its business judgment, considering the various vicissitudes, risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And this defendant denies all, and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendants may be, by Paragraph VII (*a*) of the Petition charged, without this, that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All of which matters this defendant is ready to maintain and prove, as this court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE PEOPLES COAL COMPANY.
(Sgd.) By JAS. G. SHEPHERD, *President.*

Attest:

[Seal of the Co.]

(Sgd.) S. C. SCHOOLEY, *Secretary.*

WELLES & TORREY,
R. H. PATTERSON,
Solicitors for Defendant.

408 "EXHIBIT A."

This agreement made this twenty-sixth day of October, in the year of Our Lord, one thousand eight hundred and ninety-nine. Between

The People's Coal Company, a corporation of the State of Pennsylvania, (hereinafter called the Coal Company), party of the first part; and

The Delaware, Lackawanna and Western Railroad Company, a corporation of the State aforesaid, (hereinafter called the Railroad Company) party of the second part.

Whereas: The said party of the first part holds under lease certain coal lands situated in the City of Scranton, County of Lackawanna, and State of Pennsylvania, and

Whereas: The said party of the first part contemplates the erection of a breaker on the site formerly occupied by the Oxford Breaker, in order to prepare the coal held by it as aforesaid, for market; and

Whereas: The said party of the first part desires to sell to the said party of the second part all of the coal to be mined from said lands and prepared at the aforesaid breaker, the said party of the second part is willing to purchase the same upon the terms and conditions hereinafter specified and provided.

Now, therefore, this agreement witnesseth. That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned and contained, and which are
409 to be kept by the said party of the second part, hath granted, bargained and sold and by these presents doth grant, bargain, sell and agree to mine and deliver to the said party of the second part, all the coal, with the exception of the retail coal hereinafter mentioned, which can be mined and prepared at the aforesaid breaker, subject to the conditions hereinafter mentioned.

First. It is understood and agreed by the respective parties hereto that the coal to be delivered under this Agreement shall be broken and run through screens of the size fixed from time to time by said Railroad Company at its mines.

Second. The said Coal Company shall not, unless requested so to do by the said Railroad Company, make any of the said coal into the sizes known as lump and steamboat and the production of the sizes of grate, Egg, Stove, and Chestnut Coal shall be equal to the average percentage of these sizes made by the said Railroad Company; providing, that the said Railroad Company may, at its option, and upon due notice being given to the said Coal Company, refuse to accept any coal of the size known as Grate coal.

Third. The said coal shall be thoroughly cleaned, and prepared and made as free from foreign substances as the coal made by the said Railroad Company at its mines, and when so prepared shall be carefully drawn from the Breaker Chutes into the cars of the
410 said Railroad Company and when so loaded into said cars shall be run over the scales to be furnished by the said Coal Company and correctly and properly weighed.

And it is further agreed, that the said coal shall be weighed by a person employed by the said Railroad Company and in weighing the same, the weighmaster shall make such allowances as are made from time to time by the said Railroad Company at its mines. The quantity of coal delivered shall be ascertained by the weight as furnished by the said weighmaster. The said coal shall also be subject to the inspection of the Coal Inspector of the said Railroad Company, and shall not contain any greater percentage of impurities than is allowed by the said Railroad Company to be contained in the coal prepared at the mines owned and operated by it.

It is further agreed, by the said Coal Company that should the Chief Inspector of the said Railroad Company refuse to accept said coal or any part thereof by reason of the amount of impurities contained therein, it shall be returned to the said Coal Company who shall thereupon have the same recleaned and prepared at its own proper cost and expense.

Fourth. It is further understood and agreed that the said Coal Company shall have the right to sell and dispose of coal at retail on its own account and at such prices as it shall see fit to make, but the coal so sold shall not in any event be loaded into Railroad Cars but shall be hauled from said breaker in wagons.

411 Fifth. The said Coal Company shall be allotted from time to time a pro rata share of all the anthracite coal tonnage shipped to market over the Delaware, Lackawanna and Western Railroad, from the collieries owned by it and in like manner as given to other collieries wherein the coal is purchased by the said Railroad Company. It being understood and agreed, that the People's Coal Company Colliery shall be supplied with sufficient cars to enable it to work its mines the same average number of hours as the mines of the said Railroad Company.

Sixth. Should a strike occur among the employés of either of the parties hereto, even though such strike be caused by the reduction of wages, the said respective parties hereto shall be excused from the obligations to deliver or receive coal during such interference; Provided, however, that reasonable and due diligence shall be exerted *of* overcome the said strike. And in case of the destruction of the said breaker or other buildings, which can or may interfere with the mining operations of the said Coal Company, it shall be excused from furnishing any coal during such interruption and it shall use due diligence to rebuild such building. And should the Railroad of the said Railroad Company become damaged so as to prevent the transportation of coal to market, either wholly or in part or should it become necessary or expedient to restrict or limit the production of coal, the said Railroad Company shall not be required to furnish cars to the said Coal Company during such interruptions or during such restrictive period, nor shall the said Coal Com-

412 pany be entitled to receive during either or both of said periods, more than its pro rata share of the cars furnished by the said Railroad Company to itself or to its other shippers of coal.

Seventh. The said Railroad Company shall pay the said Coal Company for all the coal sold and delivered under this Agreement

in manner as folowsl, to wit: For all sizes above the size of Pea coal, the price to be paid shall be fifty percentum (50%) of the average price received by the said Railroad Company for all sizes above and including Pea coal, for the coal sold free on board cars at Hoboken, New Jersey, during the month in which said coal is delivered. To the price so obtained there shall be added to Grate coal, should any be furnished, the sum of Thirty (30c.) cents per ton. To the price of Egg Coal the sum of Forty (40c.) cents per ton; to the price of Stove coal the sum of Fifty (50c.) cents per ton; to the price of Chestnut coal the sum of Twenty-five (25c.) cents per ton. The price of Pea Coal to be One ($1.00) dollar, less than the price paid for Chestnut coal per ton. The price for Buckwheat coal, when this size is purchased to be one-half the price paid for Pea coal.

It being distinctly understood and agreed that a ton under this Agreement shall be twenty-two hundred and forty (2240) pounds, and that the prices to be paid for the coal to be delivered under this Agreement shall be equal to and not more than the prices paid by the Lehigh Valley Coal Company to its individual shippers under certain agreements now made and which prices are made upon the Lehigh Valley Coal Company's sales of coal at tide-water.

413 Should the said Coal Company prove to the satisfaction of the said Railroad Company that the prices paid for the respective sizes delivered under this agreement, in any one month, are lower than the prices paid by the said Lehigh Valley Coal Company for such sizes, under its agreements as aforesaid, the said Railroad Company will, at the next pay-day, pay the difference in the said prices to the said Coal Company for the coal delivered in such month. And should the Superintendent of the Coal Mining Department of the said Railroad Company show that the prices paid by it for the respective sizes of said coal to said Coal Company were higher than the prices paid by the said Lehigh Valley Coal Company to its individual shippers under its agreements as aforesaid, during any preceding month, the difference between the said Railroad Company's prices and the prices paid by the said Lehigh Valley Coal Company shall be deducted from the payments to be made to the said Coal Company at the succeeding pay-day. Should either of the parties to this agreement neglect to ascertain and show that any difference, either greater or lesser, did exist during any preceding month, on or before the pay-day of the succeeding month fixed by this agreement, it shall be deemed and taken that the prices paid for the coal delivered in such month were entirely satisfactory and that the prices so paid were in full settlement for the coal delivered during such month. The settlements so made from month to month shall be final and conclusive between the parties hereto, and payments shall be made upon the sixteenth (16) day of each and every month, in the City of Scranton, Pennsylvania, for the coal delivered during the preceding month.

414 It is hereby understood and agreed that this agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties herto as fully and

effectually as if the same were specified in each and every clause thereof.

In Witness Whereof, the respective parties hereto have caused this Agreement to be signed by their presidents, sealed with their corporate seals, and attested by their secretaries, the day and year first above written.

THE PEOPLE'S COAL COMPANY,
By JNO. A. MEARS, *President.*

Attest:
W. P. BOLAND, *Secretary.*

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
By W. H. TRUESDALE, *President.*

Attest:
A. D. CHAMBERS,
Assistant Secretary.

415 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-sixth day of October, A. D., 1899, before me, the subscriber, a Commissioner for the State of Pennsylvania, in and for the City and County of New York, duly appointed and qualified, personally appeared the above-named W. H. Truesdale, President of the Delaware, Lackawanna and Western Railroad Company, who being duly sworn according to law deposeth and saith that he was personally present at the execution of the above-written Agreement and saw the common seal of the said Company duly affixed thereto, and that the seal so affixed thereto is the common and corporate seal of the said Company, and that the said Agreement was duly sealed and delivered by, as and for the act and deed of the said corporation for the uses and purposes therein mentioned, and that the names of this deponent as President and of A. D. Chambers, as Assistant Secretary of the said corporation, subscribed to the said Agreement in attestation of its due execution and delivery are of their and each of their respective handwritings.

W. H. TRUESDALE.

Sworn and subscribed to the day and year last above written. Witness my hand — official seal.

FRED B. CHAMBERS,
Commissioner for Pennsylvania in New York.

416 STATE OF PENNSYLVANIA,
County of Lackawanna, ss:

On this fourth day of November, A. D., 1899, before me, the subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and sworn, personally appeared John A. Mears, President of the People's Coal Company, who being duly sworn according to law deposes and saith that he was personally

present at the execution of the above written Agreement, and saw the common seal of the said Company duly affixed thereto and that the seal so affixed thereto is the Common and Corporate seal of the said Company, and that the said Agreement was duly sealed and delivered by, as and for the act and deed of the said corporation for the uses and purposes therein mentioned, and that the names of this deponent, as President, and W. P. Boland, as Secretary of the said corporation, subscribed to the said Agreement in attestation of its due execution and delivery are of their and each of their respective handwritings.

JNO. A. MEARS.

Witness my hand and Notarial seal the day and year last aforesaid.

F. M. LYNCH,
Notary Public. [SEAL.]

417 [*Answer Geo. F. Lee Coal Co. Filed Dec.* 20, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including THE GEORGE F. LEE COAL COMPANY, Defendants.

Separate Answer of Defendant The George F. Lee Coal Company.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said petition contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to answer, says:

418 I.

This defendant admits that it is a corporation of the State of Pennsylvania, that it owns and operates a coal mine in the township of Plymouth, Luzerne County, Pennsylvania, and that it is engaged in the business of mining, cleaning and preparing coal for the market. This defendant has no knowledge concerning the other matters and things averred and set forth in paragraphs I, II and III of the petition.

II.

This defendant has no knowledge respecting the proportion or relative amount of anthracite coal owned or controlled by the railroad

companies specified and named in the fourth paragraph of said petition and situate in the different coal fields and basins therein named and mentioned. This defendant, however, absolutely and emphatically denies being a party, either directly or indirectly, to any unlawful contract, combination and conspiracy alleged in said paragraph.

III.

As to the matters and things averred and set forth in paragraphs V and VI of the said petition, this defendant has no knowledge except so far as the same are matters of general knowledge, but *he* prays that if they are material that the plaintiff be required to prove them.

IV.

In regard to the matters set forth in paragraph VII, this defendant denies the charge that it has entered into any agree-
419 ment, scheme, combination or conspiracy with the other defendants or any of them to control, regulate or monopolize the production or sale or transportation of coal or for any other unlawful purpose.

V.

In respect to the matters overred and set forth in sub-division (*a*) of paragraph VII, this defendant admits that on the 1st day of March, 1903, it did make and conclude a contract in writing with the Delaware, Lackawanna and Western Railroad Company, one of the defendants named in said petition, in which it agreed to sell and deliver on cars at its breaker to said railroad company all the anthracite coal thereafter mined from its mine known as the "Chauncy Colliery," situate in the township of Plymouth aforesaid, together with any additional coal it might acquire in the future which shall be mined from the Chauncy Mines and prepared at the Chauncy Colliery. This defendant says, however, that said contract contained a stipulation wherein it reserved the right to sell and dispose of at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of its colliery. This defendant further avers that generally the terms and provisions of said contract are similar to those in the form of Exhibit "A" attached to the petition herein, but said printed form contains some stipulations not embodied in its contract, and for greater certainty the defendant prays leave to produce and introduce in evidence at the hearing said written contract, in order that any material difference between its provisions and said printed form may be made manifest. This defendant also declares that having acquired additional coal lands adjacent to its colliery on the 1st day of May, 1907, it contracted to sell said additional coal to the said
420 railroad company on the same terms and conditions as contained in said contract of March 1, 1903.

This defendant further avers that it executed said written contract with the said Delaware, Lackawanna and Western Railroad Company of its own volition and free will, without any concert of action or

previous understanding or agreement, express or implied, with any individual, firm or corporation, and was actuated solely and exclusively by the belief that it would promote the success of its business and enure to its own benefit and advantage to a greater extent than if it retained the right to sell and deliver its coal independently of said contract. That the scope and purpose of said contract were not to control the market price of coal, nor was it designed to operate in contravention of inter-state trade, nor was it intended by said contract to violate any of the provisions of the said act of Congress of July 2, 1890, or any other act of Congress. This defendant further avers that the fulfillment and observance of the terms and provisions of said contract can in no manner operate in restraint of trade nor create a monopoly in the sale of anthracite coal throughout the several states as charged in said petition.

VI.

And this defendant, answering the allegations set forth in paragraphs VII*b*, VII*c*, VII*d* and VII*e* of the petition, says that it has no knowledge of or concerning the matters and things in the said sub-divisions averred, and prays that if material proof thereof be duly made.

And this defendant says that it appears by the petition that the same is exhibited against this defendant and the several
421 other corporations therein named as defendants, for distinct matters and causes in several whereof, as appears by said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore multifarious. And this defendant further says that all the matters referred to in the petition relating to this defendant, and all the matters with respect to which relief is sought against this defendant, are contracts of sale made and fully to be performed in the State of Pennsylvania and authorized by the laws thereof, and that none of said matters set forth as to this defendant relate to inter-state commerce, and that none of them are in violation of the said Act of Congress of 1890, and that no cause of action is shown by the said petition against this defendant, and this defendant humbly prays that it may have the same benefit of this defense as if presented by demurrer.

And this defendant denies all and all manner of unlawful agreements, combinations and confederacies wherewith it is by said petition charged, without this, that any other matter, cause or thing in said petition contained material for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE F. LEE COAL COMPANY,
By GEORGE F. LEE,
General Manager and Treasurer.

JOHN McGAHREN,
Solicitor and Counsel for Defendants.

422 [*Answer North End Coal Co. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of The North End Coal Company, Which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of the matters or things that appear on the face thereof, and particularly the objections thereto that the said petition shows no violation of any statute of the United States, and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

423 This defendant admits and alleges that it is a corporation, chara*c*tered and doing business under the laws of the Commonwealth of Pennsylvania, and having its principal office in the City of Scranton, Lackawanna County, Pennsylvania.

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in the plaintiff's petition, and amended petition, except some of the matters alleged in subdivision (*a*) of Paragraph VII thereof, and for answer thereto this defendant says:

This defendant admits that by agreement under seal dated the 26th day of May, 1906, made by and between it and The Delaware, Lackawanna and Western Railroad Company, a corporation of Pennsylvania, it sold and agreed to deliver to said The Delaware, Lackawanna and Western Railroad Company on cars at defendant's breaker, at Scranton, Lackawanna County, Pennsylvania, all the coal, except certain portions thereof, in said contract specifically reserved and excepted, which could and should thereafter be mined and prepared at the aforesaid colliery; and that in consideration thereof the said The Delaware, Lackawanna and Western Railroad Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker; The prices per ton for the several sizes of coal to be ascertained by certain named percentages depending on the several respective sizes of the general average free on board prices of said sizes received at tide points at or near New York between Perth Amboy and Edgewater, computed as provided in said agreement.

424 A copy of said agreement, marked "Exhibit A" is hereto attached which it is prayed may be taken as a part of this answer.

And this defendant avers that all of the coal and lands mined and occupied by it at defendant's colliery in Scranton, was prior to the 8th day of November, 1899, owned by The Delaware, Lackawanna and Western Railroad Company, and was upon the 8th day of November, 1899, by said Railroad Company leased and to mine unto one Samuel Hines, who by Deed of Assignment transferred the same to this defendant.

And this defendant avers that said agreement is and always has been what it purports to be, a bona fide agreement for the sale of coal at this defendant's breaker in Pennsylvania, made within said commonwealth with a corporation of said commonwealth, and to be ful-y therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce, or stifle competition, or to fix or maintain prices, or to create or aid in creating a monopoly in the sale of anthracite coal, but that it was entered into by this defendant solely because in the exercise of its business judgment, considering the various vicissitudes, risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

425 This defendant denies all, and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendant may be, by Paragraph VII (*a*) of said Petition charged, without this, that any other matter or thing in the plaintiff's petition con-ained material for this defendant to make answer unto, and not herein and hereby well and *and* sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this court shall direct; and prays to be hence dismissed with its reasonable cost and charges in this behalf most wrongfully sustained.

THE NORTH END COAL COMPANY.
(Sgd.) By W. L. CONNELL, *President.*

Attest:
(Sgd.) EDWARD S. JONES, *Secretary.*

[Seal of the Co.]

WELLES & TORREY,
Solicitors for Defendant.

426 "EXHIBIT A."

This agreement, made this twenty-sixth day of May, in the year of Our Lord, one thousand nine hundred and six, between the North End Coal Company, a corporation of the State of Pennsylvania, hereinafter called the Coal Company, party of the first part, and The Delaware, Lackawanna and Western Railroad Company, a corporation of the State aforesaid, hereinafter called the Railroad Company, party of the second part:

Whereas, By a certain Indenture of Lease between the Railroad Company and Samuel Hines, dated the 8th day of November, 1899, the said Railroad Company did lease and to mine let unto Samuel Hines certain premises described in said lease, which said lease was assigned to the said North End Coal Company.

And whereas, The said Coal Company is desirous to sell to the said Railroad Company all the coal to be mined from said lands, and prepared at the colliery of the said Coal Company, and the said Railroad Company is willing to purchase the same upon the terms and conditions hereinafter specified and provided:

Now, therefore, this agreement witnesseth, That the said Coal Company, for and in consideration of the sum of One Dollar, lawful money of the United States, and of the covenants and agreements hereinafter mentioned and contained, and which are to be kept by the said party of the second part, hath granted, bargained and sold,
and by these presents doth grant, bargain, sell and agree to
427 mine and deliver unto the said Railroad Company all the coal,
except as hereinafter provided, which can be mined and prepared at the aforesaid colliery, subject to the conditions hereinafter mentioned:

First. The said Coal Company hereby agrees to deliver on cars at breaker of the said Coal Company, all the anthracite coal hereinafter mined from its colliery, now opened and operated, or which may be hereafter opened and operated, on the premises intended to be covered by this contract.

Second. It is understood and agreed that the said Coal Company shall have the right to sell and dispose to the New York, Ontario and Western Railroad Company twenty per cent. of the output of the said colliery, until the said New York, Ontario and Western Railroad Company shall have received one hundred and fifty thousand tons of coal, after which time the said Coal Company shall deliver the entire output of its said colliery to the said The Delaware, Lackawanna and Western Railroad Company, excepting, however, that the said Coal Company shall have the right to sell and dispose of at retail on its own account the coal for use and consumption of its employés, and others in the immediate neighborhood of its colliery, provided that the coal so sold and disposed of, shall not in any event be loaded into railroad cars, but shall be hauled from the colliery of the said Coal Company by wagon.

Third. The said Coal Company shall not, unless requested so to do

by the said Railroad Company, make any of the said coal into
428 the sizes known as Lump and Steamboat and the production of the sizes of Grate, Egg, Stove and Chestnut Coal shall be equal to the average percentage of these sizes made by the said Railroad Company.

Fourth. The said coal shall be thoroughly cleaned and prepared and made as free from foreign substances as the coal made by the said Railroad Company at its mines, and when so prepared shall be carefully drawn from the breaker chutes into the cars of the said Railroad Company, and when so loaded into said cars shall be run over the scales to be furnished by the said Coal Company and correctly and properly weighed. And it is further agreed, That the said coal shall be weighed by a person employed by the said Railroad Company, and in weighing the same, the weigh-master shall make such allowances as are made from time to time by the said Railroad Company at its mines. The quantity of coal delivered shall be ascertained by the weights as furnished by the said weigh-master. The said coal shall also be subject to the inspection of the Coal Inspector of the said Railroad Company, and shall not contain any greater percentage of impurities than is allowed by the said Railroad Company to be contained in the coal prepared at the mines owned and operated by it. It is further agreed, by the said Coal Company that should the Chief Inspector of the said Railroad Company refuse to accept said coal, or any part thereof, by reason of the amount of impurities contained therein, it shall be returned to the said Coal Company, who shall thereupon have the same re-cleaned and prepared at its own cost and expense.

429 Fifth. The said Coal Company shall be allotted from time to time a pro rata share of all the anthracite coal tonnage shipped to market over the Delaware, Lackawanna and Western Railroad from the coll-eries owned by it, and in like manner as given to other coll-eries wherein the coal is purchased by the said Railroad Company: It being understood and agreed That the colliery of the said Coal Company shall be supplied with sufficient cars to enable it to work its mines the same average number of hours as the mines of the said Railroad Company.

Sixth. Should a strike occur among the employés of either of the parties hereto, even though such strike be caused by the reduction of wages, the said respective parties hereto shall be excused from the obligations to deliver or receive coal during such interference. Provided, however, that reasonable and due diligence shall be exerted to overcome the said strike and in case of the destruction of the said breaker or other buildings, which can or may interfere with the mining operations of the said Coal Company, it shall be excused from furnishing any coal during such interruption, and it shall use due diligence to rebuild said buildings. And should the railroad of the said Railroad Company become damaegd so as to prevent the transportation of coal to market, either wholly or in part, or should it become necessary and expedient to restrict and limit the production of coal the said Railroad Company shall not be required to furnish cars to the said Coal Company during such interruption or dur-

ing such restrictive period, nor shall the said Coal Company be
430 entitled to receive during either or both of said periods more than its pro rata share of the cars furnished by the said Railroad Company to itself and to its other shippers of coal.

Seventh. The said Railroad Company shall pay the said Coal Company for all the coal sold and delivered under this agreement in manner as follows, to wit: For all sizes above Pea coal sixty-five (65%) per cent. of the general average free on board prices of said sizes received at tide points at or near New York between Perth Amboy and Edgewater, computed as hereinafter provided. For pea coal, fifty (50%) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty Cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50), the proportion paid the said Coal Company shall be increased one (1) per cent. until the percentage paid for Pea Coal reaches sixty-five per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York, when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the said Coal Company shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the said Coal Company shall advance one (1) per cent. for each ten cents
(10) advance in the f. o. b. price above Two Dollars and
431 Fifty ($2.50) cents, as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Railroad Company to pay for Buckwheat No. 1 coal a rate higher than for Pea Coal.

For all sizes smaller than Buckwheat No. 1 the said Coal Company shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents $1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the said Railroad Company shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Railroad Company's own coll-eries and operations.

It is also agreed that if at any time, through changes of sizes of meshes or screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent. when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is understood and agreed that the said Coal Company shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1, when and as often as the said Railroad Company

refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

432 Eighth. Settlement shall be made from month to month on the 20th day of each month for the coal delivered during the preceding month, and such settlement shall be final and conclusive between the parties hereto.

Ninth. It being distinctly understood and agreed that a ton under this agreement shall be twenty-two hundred and forty (2240) pounds.

Tenth. The said Coal Company will consign and manifest said coal to such points and parties as the said Railroad Company shall from time to time direct, and will furnish and send to the said Railroad Company and to the consignees named by the said Railroad Company, and to such other parties as the said Railroad Company may direct, such copies of manifest and such notice relating to coal shipped as the said Railroad Company may direct; and the said Coal Company will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

The said North End Coal Company doth hereby constitute and appoint W. L. Connell to be its Attorney, for it and in its name, and as and for its corporate act and deed to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

The said The Delaware, Lackawanna and Western Railroad Company doth hereby constitute and appoint W. H. Truesdale to be its Attorney, for it and in its name, and as and for its corpo-

433 rate act and deed to acknowledge this Indenture before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

In witness whereof, The respective parties hereto have caused this agreement to be signed by their Presidents, sealed with their respective seals, and attested by their Secretaries, the day and year first above written.

THE NORTH END COAL COMPANY,
By W. L. CONNELL, *President.*

Attest:

[SEAL.] EDWARD S. JONES, *Secretary.*

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
By W. H. TRUESDALE, *President.*

Attest:

[SEAL.] FRED F. CHAMBERS, *Secretary.*

434 STATE OF NEW YORK,
County of New York, ss:

Be it remembered that on the Sixth days of June, one thousand nine hundred and six, before me, the subscriber, a Commissioner for the State of Pennsylvania in and for the State of New York, duly appointed and qualified, personally appeared W. H. Truesdale, who being by me first duly sworn, did depose and say that he is the President of The Delaware, Lackawanna and Western Railroad Company, that he knows the corporate seal of said Company, that Fred F. Chambers is the Secretary of said Company; that as President of said Company he signed the foregoing Indenture for and on behalf of said Company, that the seal thereto affixed is the common seal of said Company, that the said Fred F. Chambers, as Secretary, signed his name in the presence of this deponent in attestation of the affixing of said seal, that the said Indenture was thus executed pursuant to and ordered to be delivered for the purposes therein expressed by resolution of the Board of Directors of said Company, and that the said W. H. Truesdale, the attorney named in the foregoing Indenture, acknowledged the said Indenture to be the act of the said The Delaware, Lackawanna & Western Railroad Company.

W. H. TRUESDALE.

Sworn to and subscribed before me, the day and year aforesaid. Witness my hand and official seal.

[SEAL.]

J. J. OWENS,
Commissioner for Pennsylvania, in New York.

435 STATE OF PENNSYLVANIA,
County of Lackawanna, ss:

Be it remembered that on the 23rd day of May, one thousand nine hundred and six, before me the subscriber, a Notary Public duly appointed and qualified, personally appeared W. L. Connell, who being by me first duly sworn did depose and say that he is the President of the North End Coal Company, that he knows the corporate seal of said Company; that Edward S. Jones is the Secretary of the said Company; that as President of said Company he signed the foregoing Indenture for and on behalf of said Company; that the seal thereto affixed is the common seal of said Company *that the seal thereto affixed is the common seal of said Company;* that the said Edward S. Jones, as secretary, signed his name in the presence of this deponent in attestation of the affixing of said seal, that the said Indenture was thus executed pursuant to and ordered -o be delivered for the purposes therein expressed by resolution of the Board of Directors of said Company, and that the said W. L. Connell, the attorney named in the foregoing Indenture, acknowledged the said Indenture to be the act of the said North End Coal Company.

W. L. CONNELL.

Sworn to and subscribed before me the day and year aforesaid.

[SEAL.]

ARCHBALD MOSES,
Notary Public.

My commission expires the end of the next session of the Senate.

436 [*Answer Melville Coal Co. Filed Jan.* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING CO. et al., Defendants.

Separate Answer of the Melville Coal Company, which has Been Made One of the Parties Defendant in this Proceeding.

This Defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this Defendant to appear in this Honorable Court or to give this court jurisdiction as to this Defendant, for answer thereunto, or to so much thereof as this Defendant is advised it is material or necessary for it to make answer unto, says:

This Defendant is an utter stranger to all and singular the matters and things alleged and set forth in Plaintiff's petition, and has not information for a formation of a belief as to any of the matters alleged and set forth in the Plaintiff's petition or the amendment thereto, except some of the matters alleged in subdivision (*a*) of paragraph VII thereof; and for answer thereto this Defendant says:

437 This Defendant admits that, by agreement under seal dated June 1st, 1901, made by and between it and the Lehigh & Wilkes-Barre Coal Company, a corporation of Pennsylvania, it sold, and agreed to deliver to said Lehigh & Wilkes-Barre Coal Company, on cars at Defendant's breaker at Luzerne County, Pennsylvania, all the anthracite coal thereafter mined from any of Defendant's mines then opened or operated, or which Defendant might thereafter open and operate, on the lands and mines then operated by the Melville Coal Company, in Conyngham Township, Luzerne County, Pennsylvania, or which might thereafter be operated through said colliery, or other mines that might thereafter be opened by this Defendant upon the same premises or other lands tributary thereto which this Defendant might thereafter acquire or operate and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, said Lehigh & Wilkes-Barre Coal Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—depending on the several respecti e sizes—of the general average free-on-board prices of said sizes received at tide points at or near

New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

And this Defendant avers that said agreement is, and always has been, what it purports to be, a bona fide agreement for the sale of coal at Defendant's breaker in Pennsylvania, made within said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into by this Defendant in the exercise of its legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by
438 this Defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this Defendant without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create, or to aid in creating a monopoly in the sale of anthracite coal; but that it was entered into by this Defendant solely because, in the exercise of its business judgment, it believed and it still believes that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And this Defendant further answering says:

That the coal, mentioned in Exhibit A hereunto attached and the land from which said coal is being mined was prior to the first day of January, 1895, the property of the Lehigh & Wilkes-Barre Coal Company, at which time the said coal was leased by the said Lehigh & Wilkes-Barre Coal Company to Reese G. Brooks by lease bearing date January 1st, 1895, which said lease by divers assignments is now vested in this Defendant.

And this Defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it, or the other Defendants may be by paragraph seven (*a*) of said petition charged, without this that any other matter or thing in the Plaintiff's petition contained material for this Defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this Defendant.

All which matters this Defendant is ready to maintain and prove as this court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

MELVILLE COAL COMPANY,
By JAMES S. McANULTY,
Secretary.

WILLARD, WARREN & KNAPP,
Solicitors for Defendant.

439 EXHIBIT A.

This agreement, made and executed in the city of New York, State of New York, this first day of June, nineteen hundred and one, between The Melville Coal Company (hereinafter called the Seller) party of the first part, and The Lehigh & Wilkes-Barre Coal Company, a corporation of the State of Pennsylvania (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz: Lands leased by Lehigh & Wilkes-Barre Coal Company to Reese G. Brooks by lease under date 1 January, 1895, recorded in Deed Book No. 338, Page 64, Luzerne County, Penna. The interest of said Brooks as lessee being now held through sundry assignments by the Melville Coal Company.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

440 The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the gen-

eral average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

441 For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than for Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents' increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

442 Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true aver-

age price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid,
443 the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a chief inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following screen meshes, or their equivalent, viz.:

Broken through a mesh 4-inch square and over a mesh 2¾-inch square.

Egg through a mesh 2¾-inch square and over a mesh 2-inch square.

Stove through a mesh 2-inch square and over a mesh 1⅜-in square.

Chestnut through a mesh 1⅜-inch square and over a mesh ¾-inch square.

Pea through a mesh ¾-inch square and over a mesh ½-inch square.

Buckwheat No. 1 through a mesh ½-inch square and over a mesh ¼-inch square.

Buckwheat No. 2 or Rice through a mesh ¼-inch square and over a mesh ⅛-inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five
444 (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent., viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests
445 on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the general superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the chief inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the

Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weighmasters approved by the Buyer, or upon the weigh-scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the
446 coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the railway company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller, viz.: C. D. Simpson; the president of the Buyer Company to be the second person; and the president for the time being of Girard Trust Company to be the third person.

447 The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause,

another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the question involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the Permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

448 In witness whereof, the parties have caused their respective corporate seals duly attested, to be hereunto affixed the day and year first above written.

Signed, sealed and delivered in the presence of

THE MELVILLE COAL COMPANY,
By J. N. RICE, *Vice President.*

Attest:

[Seal of the Melville Coal Company.]

J. S. McANULTY, *Secretary.*

THE LEHIGH & WILKES-BARRE COAL CO.,
By C. H. WARREN, *Vice President.*

Attest:

[Seal of Lehigh & Wilkes-Barre Coal Company.]

G. O. WATERMAN, *Secretary.*

449 [*Answer Parrish Coal Co. Filed Jan.* 3, 1908.]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

The Separate Answer of the Parrish Coal Company to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had been herein set forth, by way of plea or demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto, or as much thereof as it is advised it is material or necessary for it to make answer unto, answering says:

This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's several allegations set forth in the plaintiff's petition, except as to some of the matters hereinafter set forth, alleged in sub-division A. of the seventh paragraph thereof;

450

This defendant admits that by agreement under seal, dated 1 May, 1901, made by and between itself, a corporation of the State of Pennsylvania, and the Lehigh and Wilkes-Barre Coal Company, likewise a corporation of said State, by which the seller agrees to sell and deliver on cars at breaker, to the buyer, all the Anthracite coal hereinafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract and which shall be reclaimed from the culm banks on said premises, viz.: the same leased by the said Parrish Coal Company from the Lehigh and Wilkes-Barre Coal Company.

The terms of said contract are substantially the same as those contained in "Exhibit A" attached to plaintiff's bill, but said printed form contains some stipulations not embodied in said contract, and for greater certainty the defendant prays leave to produce and introduce in evidence at the hearing said written contract in order that any material difference between its provisions and said printed form may be made manifest.

And this defendant avers that said contracts were entered into in good faith on its part and for the purpose of obtaining fair prices for its coal; that the rates paid therefor are no more than a reasonable compensation for said coal and no more than the same is fairly worth at this defendant's breaker since the date of its contract; that the method of fixing the rates on the percentage basis

was deemed by this defendant as fair to both parties—a method in use a number of years to determine the wages of miners, and in some cases, the freight charges.

451 Under this arrangement this defendant is relieved of many of the risks and uncertainties of the coal business and of the trouble and expense of personal attention to sales. These were moving considerations for the making of said contract.

This defendant avers that said contract was entered into independently of all other producing companies or persons engaged in the coal trade and without any agreement or understanding with any of them except, as aforesaid, with the Lehigh & Wilkes-Barre Coal Company, with which it had contracted, and was without any purpose to stifle competition or to violate or evade the provisions of the Act of Congress approved 2nd of July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

This defendant further shows to the Court that the contract in question was made between corporations of the State of Pennsylvania, that the sale and delivery of said coal and performance of said contracts was, and was intended by the express terms of said contract, to be wholly within said State.

This defendant submits to the consideration of the Court that the sales of coal under contract so made, between parties so situated, and to be so performed, is not trade and commerce between States, and is not embraced within the Act of Congress of 2nd July, 1890.

This defendant denies any and all matters of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit, violated said Act or in any manner offended against the law of the land.

All which matters this defendant is ready to maintain and
452 prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE PARRISH COAL COMPANY,
By N. N. ASHLEN, *President.*

HENRY W. PALMER, *Solicitor.*

453 [*Answer Red Ash Coal Co. Filed Dec.* 20, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Including THE RED ASH COAL COMPANY, Defendants.

Separate Answer of Defendant The Red Ash Coal Company.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said petition contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to answer, says:

454 I.

This defendant admits that it is a corporation of the State of Pennsylvania; that it owns and operates a coal mine in the Township of Wilkes-Barre, and Borough of Laurel Run, Luzerne County, Pennsylvania, and that it is engaged in the business of mining, cleaning and preparing coal for the market. This defendant has no knowledge concerning the other matters and things averred and set forth in paragraphs I, II and III of the petition.

II.

This defendant has no knowledge respecting the proportion or relative amount of anthracite coal owned or controlled by the railroad companies specified and named in the fourth paragraph of said petition, and situate in the different coal fields and basins therein named and mentioned. This defendant, however, absolutely and emphatically denies being a party, either directly or indirectly, to any unlawful contract, combination and conspiracy alleged in said paragraph.

III.

As to the matters and things averred and set forth in paragraphs V and VI of the said petition, this defendant has no knowledge, except so far as the same are matters of general knowledge, but he prays that if they are material that the plaintiff be required to prove them.

IV.

In regard to the matters set forth in paragraph VII, this defendant denies the charge that it has entered into any agreement,
455 scheme, combination or conspiracy with the other defendants, or any of them, to control, regulate or monopolize the production or sale or transportation of coal or for any other unlawful purpose.

V.

In respect to the matters averred and set forth in subdivision (*a*) of paragraph VII, this defendant admits that on the first day of May, 1901, it did make and conclude a contract in writing with the Lehigh & Wilkes-Barre Coal Company, a Pennsylvania corporation, one of the defendants named in said petition, from which company it acquired most of its coal by sundry leases, in which it agreed to sell and deliver on cars at its breaker to said company, all the anthracite coal thereafter mined from its mines, situate in the Township of Wilkes-Barre, and Borough of Laurel Run aforesaid, together with any additional coal it might acquire in the future, which shall be mined from and prepared at its colliery. This defendant says, however, that said contract contained a stipulation wherein it reserved the right to sell and dispose of at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of its colliery. This defendant further avers that generally the terms and provisions of said contract are similar to those in the form of Exhibit "A," attached to the petition herein, but for greater certainty the defendant prays leave to produce and introduce in evidence at the hearing said written contract in order that any material difference between its provisions and said printed form may be made manifest.

This defendant further avers that it executed said written contract with the said Lehigh & Wilkes-Barre Coal Company, of its own volition and free will, without any concert of action or previous understanding or agreement, express or implied, with any indi-
456 vidual, firm or corporation, and was actuated solely and exclusively by the belief that it would promote the success of its business and enure to its own benefit and advantage to a greater extent than if it retained the right to sell and deliver its coal independently of said contract. That the scope and purpose of said contract were not to control the market price of coal, nor was it designed to operate in contravention of inter-state trade, nor was it intended by said contract to violate any of the provisions of the said act of Congress of July 2, 1890, or any other act of Congress. This defendant further avers that the fulfillment and observance of the terms and provisions of said contract can in no manner operate in restraint of trade, nor create a monopoly in the sale of anthracite coal throughout the several states as charged in said petition.

VI.

And this defendant, answering the allegations set forth in paragraphs VII*b*, VII*c*, VII*d* and VII*e* of the petition, says that it has

no knowledge of or concerning the matter and things in the said subdivision averred, and prays that, if material, proof thereof be duly made.

And this defendant says that it appears by the petition that the same is exhibited against this defendant and the several other corporations therein named as defendants, for distinct matters and causes in several whereof, as appears by said petition, this defendant is not in any manner interested or concerned, and that the petition is therefore multifarious. And this defendant further says that all the matters referred to in the petition relating to this defendant, and all the matters with respect to which relief is sought against this defendant, are contracts of sale made and fully to be performed in the State of Pennsylvania, between Pennsylvania corporations,
457 and authorized by the laws thereof, and that none of said matters set forth as to this defendant relate to inter-state commerce, and that none of them are in violation of the said act of Congress of 1890, and that no cause of action is shown by the said petition against this defendant, and this defendant humbly prays that it may have the same benefit of this defense as if presented by demurrer.

And this defendant denies all and all manner of unlawful agreements, combinations and confederacies wherewith it is by said petition charged, without this, that any other matter, cause or thing in said petition contained material for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge and belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

RED ASH COAL COMPANY,
By WOODWARD KEAREMNY,
Treasurer.

B. R. JONES,
THOS. H. ATHERTON,
Solicitors and Counsel for Defendants.

458 LUZERNE COUNTY, *ss:*

Personally appeared the above named —— ——, who being duly sworn, deposes and says that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

—— ——.

Sworn and subscribed before me this — day of December, 1907.

—— ——.

459 [*Answer Raub Coal Co. Filed Jan.* 3, 1908.]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

The Separate Answer of the Raub Coal Company to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had herein been set forth by way of plea or demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto or as much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's several allegations set forth in the plaintiff's petition, except as to some of the matters as hereinafter set forth, alleged in subdivision A of the seventh paragraph thereof.

460 This defendant admits that by agreement under seal, dated first day of May, A. D. 1902, made by and between itself, a corporation of the State of Pennsylvania, and the Lehigh Valley Coal Company, likewise a corporation of said state, it sold and agreed to deliver to the said Lehigh Valley Coal Company on cars at defendant's breaker in the Borough of Luzerne, County of Luzerne, Pennsylvania, all the coal which it should mine from certain premises located in said county, as will more fully appear by the inspection of said agreement, copy of which is hereto annexed, marked Exhibit A, which respondent prays may be taken as part of this answer.

And this defendant avers that said contract was entered into in good faith on its part and for the purpose of obtaining fair prices for its coal; that the rates payable therefor are no more than a reasonable compensation for said coal, and no more than the same is and has been fairly worth at this defendant's breaker since the date of its contract; that the method of fixing the rate on the percentage basis was deemed by this defendant as fair to both parties—a method in use for a number of years to determine the wages of miners, and in some cases the freight charge.

Under the arrangement this defendant is relieved of many of the risks and uncertainties of the coal business, and of the trouble and expense of personal attention to sales. These were moving considerations for the making of said contract.

This defendant further avers that said contract was entered into independently of all other producing companies or persons engaged in the coal trade, and without any agreement or understanding with any of them, except as aforesaid the Lehigh Valley Coal Company with which it contracted, and was without any purpose to stifle competition or to violate or evade the provisions of the Act
461 of Congress approved 2nd July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

This defendant further shows to the court that the contract in question was made between corporations of the State of Pennsylvania; that the sale and delivery of said coal and performance of said contract are and were intended by the express terms of said contract to be wholly within the said state.

This defendant submits to the consideration of the court that the sale of coal under a contract so made, between parties so situated, and to be so performed, is not trade and commerce between states, and is not embraced within the Act of Congress of 2nd July, 1890.

This defendant denies any and all matters of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit, violated said act or in any manner offended against the law of the land.

All which matters this defendant is ready to maintain and prove as this court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE RAUB COAL COMPANY,
By W. T. PAYNE, *President.* [SEAL.]

PAUL BEDFORD,
GEO. R. BEDFORD, *Solicitors.*

462 EXHIBIT A.

This agreement, made and executed in the City of Philadelphia, Pennsylvania, this first day of May, nineteen hundred and two, between The Raub Coal Company (hereinafter called the seller), party of the first part, and The Lehigh Valley Coal Company, a corporation of the State of Pennsylvania (hereinafter called the buyer), party of the second part, witnesseth:

First. The seller hereby sells and agrees to deliver on cars at breaker to the buyer all the anthracite coal hereafter mined from any of its mines now opened and operated or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz.:

Situate in boroughs of Luzerne, Courtdale and Swoyersville, and township of Kingston, Luzerne County, Penn'a, known as Louise Colliery, together with any other operations connected therewith

or adjacent thereto, now or hereafter owned or controlled by the seller.

Shipments to be made from time to time as called for by the buyer. The buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The buyer to use its best efforts to find a market for the seller's coal so as to enable the seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the seller to work its collieries as many days in each year as other collieries work similarly situated.

The buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has
463 contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the president for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery either the buyer or the seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The buyer agrees to pay, and the seller agrees to accept, the following prices for said coal when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes of pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For pea coal, fifty (50) per cent. of the general average f. o. b. price for pea coal at said tide points at or near New York when the said price is two dollars and fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in said f. o. b. price above two dollars and fifty cents ($2.50), the proportion paid the seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York
464 when the said price is two dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the seller shall be increased two (2) per cent. until the said f. o. b. price reaches two

dollars and fifty cents ($2.50), after which the proportionate price paid the seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above two dollars and fifty cents ($2.50), as in the case of pea coal above mentioned. Provided, that nothing herein contained shall oblige the buyer to pay for buckwheat No. 1 coal a rate higher than for pea coal.

For all sizes smaller than buckwheat No. 1 the seller shall receive twenty-five (25) cents per ton f. o. b. railroad cars at breaker and for each ten (10) cents' increase in the general average f. o. b. price above one dollar and thirty cents ($1.30) a ton at tide, the price shall be increased five (5) cents per ton; but it is understood that the buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the buyer's own collieries and operations.

It is also agreed that if at any time through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than buckwheat No. 1, as described herein, shall be marketable at tide at the same price as buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is two dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions. And it is also understood and agreed that the seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than buckwheat No. 1, when and as often as the buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

465 Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the buyer shall furnish not later than the eighth of each month a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the buyer and seller, by whom they shall be accepted, subject to the right of appeal to the arbitration board in the settlement between buyer and seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to buyer and seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the seller shall have the right to sell and dispose of at retail on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th) for all coal delivered by the seller under this contract during the preceding calendar month. Provided, that if default shall be made by the buyer in any payment aforesaid the seller may at its option, declare this contract forfeited by
466 giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a chief inspector to be appointed by the buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg, through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove, through a mesh 2 inches square and over a mesh 1⅜ inches square.

Chestnut, through a mesh 1⅜ inches square and over a mesh ¾ of an inch square.

Pea, through a mesh ¾ of an inch square and over a mesh ½ of an inch square.

Buckwheat No. 1, through a mesh ½ of an inch square and over a mesh ¼ of an inch square.

467 Buckwheat No. 2, or rice, through a mesh ¼ of an inch square and over a mesh ⅛ of an inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither egg, stove nor chestnut coal shall contain more than five (5) per cent. of larger sizes; that chestnut coal shall not contain more than ten (10) per cent. of pea and five (5) per cent. of buckwheat No. 1; nor pea coal more than fifteen (15) per cent. of buckwheat No. 1 and five (5) per cent. of rice; nor buckwheat No. 1 more than fifteen (15) per cent. of rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz:

Broken, one (1) per cent.; egg, two (2) per cent.; stove, four (4) per cent.; chestnut, an average of not more than five (5) per cent.,

and at no time to exceed a maximum of seven (7) per cent.; pea, ten (10) per cent.; buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.), viz:

Broken, two (2) per cent.; egg, two (2) per cent.; stove, three (3) per cent.; chestnut, five (5) per cent.; pea and buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid,
468 the seller shall prepare the coal so as to conform to such higher standard; provided, however, that the seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the seller to be up to the standard, the seller shall in that case make complaint to the general superintendent of the buyer, and, if it is found by him to be up to the required standard the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the seller. The cost of all inspections shall be equally divided between the parties hereto, except that the chief inspector shall be paid by the buyer.

Ninth. It is understood and agreed that the seller will ship to the buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the seller will reprepare the same until it conforms to the required standard.

469 Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the seller under this contract shall be weighed either upon scales at mines, tested and approved by the buyer, and by the weighmasters approved by the buyer, or upon the weigh scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount

as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The seller will consign and manifest said coal to such points and parties as the buyer shall from time to time direct, and will furnish and send to the buyer, and to the consignees named by the buyer, and to such other parties as the buyer may direct, such copies of manifest and such notice relating to coal shipped as the buyer may direct; and the seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the railway company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average
470 produced at the several collieries operated by the buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the seller, viz: ——; the president of the buyer company to be the second person, and the president for the time being of Girard Trust Company to be the third person.

The name of the person to represent the seller shall be inserted in this agreement, or, if not named before its execution shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The arbitration board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If, by reason of changes in trade or colliery conditions, the seller is unable to operate its mines without financial loss on the basis of this contract, and the buyer declines to modify this agreement, the seller may submit the questions involved to the said board of arbitration, and, if the board decides that the seller cannot operate its mines without loss on the basis of this contract, and if the buyer and seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or

times the average f. o. b. price at tide for sizes of coal larger than pea coal shall be less than three dollars and fifty cents ($3.50) per ton, then the seller may, at its option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the seller to the buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent arbitration board.

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Seventeenth. This agreement shall enure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In Witness Whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Signed, sealed and delivered in the presence of

RAUB COAL CO.,
By W. T. PAYNE, *President.*

Attest:

[Raub Coal Co. Seal.]

GEO. H. FLANAGAN, *Sec'y.*

THE LEHIGH VALLEY COAL CO.,
By ALFRED WALTER, *President.*

Attest:

[Lehigh Valley Coal Co. Seal.]

W. C. ALDERSON, *Treasurer.*

472 [*Answer Midvalley Coal Co. Filed Jan.* 13, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

The Separate Answer of Midvalley Coal Company to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had herein been set forth by way of plea or demurrer, for answer thereto or as much thereof as it is advised it is material or necessary for it to make answer unto, answering says:—

This defendant admits that by agreement under seal dated ——, made by and between it and Lehigh Valley Coal Company, a corporation of Pennsylvania, it sold and agreed to deliver the said Lehigh Valley Coal Company on cars at defendant's breaker in Columbia County, of Pennsylvania, all the anthracite coal
473 thereafter mined from any of the mines operated by it during the continuance of said agreement, as will more fully appear by the inspection of said agreement, copy of which is hereto annexed marked "Exhibit A," which respondent prays may be taken as part of this answer:

This defendant avers that said agreement correctly and truly represented the transaction between this defendant and the said company, which was simply a contract of purchase on the part of the said company and contract of sale on the part of this defendant; so far as it was interested in the matter it was only concerned to get a fair price for its coal. The method of fixing it by a percentage of the price of coal at tidewater was familiarly known in the region, as for many years it had been the method of determining the wages to be paid to the miners, and in some cases the method of determining the amount of freight to be paid. The plan had the great advantage that it relieved the respondent from the expense of maintaining its own agency for the sale of coal at tidewater and of giving more or less of personal attention to the sales, and what was still more important it insured the payment of the price without any appreciable risk of loss. These were the reasons which led the respondent to enter into the contract, and it was not party or privy to the purposes or motives of its vendee, except as in the case of every sale of any commodity it is to be assumed that the purchaser expected to make a profit in some way out of the transaction.

This defendant further shows that the sale and delivery of the said coal have always been and were intended to be completed at the place and in the county and within the State where made, and so far as the interest or part of this defendant is involved such sales cannot by any possibility be distorted into interstate transactions or made to constitute in any respect a part of the commerce between States.

This defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it is or
474 may be by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

MIDVALLEY COAL COMPANY.
[SEAL.] By N. B. PRICE, *Secretary.*

S. DICKSON,
Solicitor for Defendant.

475 [*Answer Austin Coal Co. Filed Jan.* 2, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Answer by the Austin Coal Company, One of the Defendants.

To the Honorable the Judges of said Court:

The Defendant, The Austin Coal Company, now and at all times hereafter saving and reserving unto itself, all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and imperfections in Plaintiff's Petition contained, for answer thereunto or unto so much of such parts thereof as this Defendant is advised is or are material or necessary for it to make answer unto, says:

First. Answering the First Paragraph of the Plaintiff's Petition, says that this Defendant believes it is true that the Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company, are common carriers engaged in Interstate trans-
476 portation, particularly in the transportation of Anthracite coal from the mines in Pennsylvania, to the markets of that and other states, and that the Philadelphia & Reading Coal & Iron Company, the Lehigh Valley Coal Company, the Lehigh & Wilkes-Barre Coal Company, the Pennsylvania Coal Company, the Hillside Coal & Iron Company and the New York, Susquehanna & Western Coal Company, own and operate Anthracite coal mines in the State of Pennsylvania, and are all Corporations of the State of Pennsylvania. This Defendant is not informed and does not know whether the other allegations in said paragraph are true or not and demands proof of same if material.

Second. That this Defendant is not advised and therefore does not know whether the allegations set forth in the Second Paragraph of said Petition are true or not, and demands proof of same, if material.

Third. This Defendant is not advised and does not know whether the allegations set up in the Third Paragraph of said Petition are true or not and demands proof of same, if material.

Fourth. This Defendant is not sufficiently advised to state whether or not the facts set up in the Fourth Paragraph of said Petition are true or not, and if material demands proof of same.

Fifth. This Defendant does not know whether the matter- set up in the Fifth Paragraph of said Petition are true or not, and if material demands proof of same.

Sixth. This Defendant is not informed and does not know whether the allegations set up in the Sixth Paragraph are true or not and demands proof of same if material.

Seventh. This Defendant does not know whether the matters set up in the said Petition contained in Paragraph Seven or in the subdivisions thereof marked *a, b, c, d & e,* are true or not, except that this Defendant has an agreement with the Lehigh Valley Coal Company to sell at its breaker the coal produced at its colliery,
477 and substantially, the agreement is the same as the copy of the agreement attached to said petition and marked Exhibit "A." A full and complete copy of the agreement between this Defendant and the Lehigh Valley Coal Company, one of the defendants in said Petition, is attached to this answer and marked Exhibit "A."

Eighth. Further answering said Petition, this Defendant says that its name is The Austin Coal Company; that it is a corporation duly organized and created under the laws of the Commonwealth of Pennsylvania; that its principal office is in the City of Scranton, County of Lackawanna and State of Pennsylvania; that it does not own any capital stock in any other corporation, either in law or in equity; that it a corporation of the State of Pennsylvania, has an agreement with the Lehigh Valley Coal Company, also a corporation of the State of Pennsylvania, bearing date the 26th day of March, 1901, for the sale of its coal to the said Lehigh Valley Coal Company, one of the Defendants, at its breaker or colliery in the State of Pennsylvania, and that said agreement is still in force and a true and correct copy of which agreement is hereto attached, marked Exhibit "A" and made a part of this answer. As its terms show, the agreement is for the sale of all the coal produced at Defendant's colliery, (except what may be sold and delivered in wagons), for the agreed percentage of the general average free-on-board prices received at tide water for corresponding sizes. Said agreement is of the same form, tenor and effect as the agreement mentioned in Paragraph Seven-*a*, in said Petition, a copy of which is attached to said Petition as "Exhibit A," except the date, name of the seller, the description and location of the premises, the Region in which the same is situate, and the execution and acknowledgment of the same.

Ninth. The Defendant further answering said Petition says that it did not enter into said agreement of March 26, 1901, with
478 the Lehigh Valley Coal Company, in combination or agreement with any other person or corporation except the said Lehigh Valley Coal Company, for any unlawful purpose, and by so doing it did not violate any Act of Congress. It did not, when it entered into said agreement with the Lehigh Valley Coal Company, enter into a combination or conspiracy to restrain trade and commerce in Anthracite coal among the several states by shutting out competition in the transportation and sale of that commodity, and

it did not thereby regulate the prices thereof among the several states, nor did it monopolize or attempt to monopolize and combine and conspire to monopolize a part of such trade and commerce in violation of the provisions of Sections One and Two respectively, of the Act of Congress of July 2, 1890. This Defendant is informed and believes that by entering into said agreement with the Lehigh Valley Coal Company, for the sale to it of its product or coal, it did not violate said Act of Congress or any other Act of Congress, and it denies said allegation in said Petition so far as the same relates to this Defendant. The coal sold by this Defendant to the said Lehigh Valley Coal Company is sold and delivered at its breaker or colliery in the State of Pennsylvania, and this Defendant specifically denies that it in any manner has violated any of the laws of the United States governing Interstate Commerce. This Defendant has nothing whatever to do with the transportation of its coal sold and delivered to the Defendant, the Lehigh Valley Coal Company, and has nothing to do with the sale of said coal by the Lehigh Valley Coal Company.

Tenth. This Defendant is advised by counsel that it is not required to make further answer to said Petition, but if any further or different answer shall be required by the said Honorable Court, this Defendant will make further answer to the best of its knowledge and belief.

479 This Defendant believes the statements and allegations in this, its answer to said Petition, are true and correct, and is ready to prove the same true when given an opportunity so to do.

This Defendant states upon information and belief that the said Honorable Court has no jurisdiction of the matters set up in the Plaintiff's Petition, so far as the same relate to this Defendant.

Lastly: This Defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE AUSTIN COAL COMPANY,
By W. W. WATSON, *Solicitor.*

480 EXHIBIT A.

This Agreement, made and executed in the city of Philadelphia, Penna., this 26th day of March, Nineteen Hundred and One, between the Austin Coal Company, a corporation of the State of Pennsylvania (hereinafter called the Seller), party of the first part, and The Lehigh Valley Coal Company, a corporation of the State of Pennsylvania (hereinafter called the Buyer), party of the second part,

Witnesseth: First. The seller hereby sells, and agrees to deliver on cars at breaker to the buyer, all the anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from Culm Banks on said premises, viz.:

Two southerly parts of the Zepheniah Knapp Warrant, located in Old Forge and Ransom Townships, Lackawanna County, by lease of the Lehigh Valley Coal Company, dated 23rd February, A. D. 1891, recorded in Lackawanna County Deed Book, No. 75, Page 406, etc., 2nd April, A. D. 1891. Also two certain tracts of land situate in Township of Ransom, Lackawanna County, Warrantee names of "Joseph Hunter" and "Daniel Turner," by lease of G. Mortimer Lewis and George F. Nesbitt, dated 16th October, A. D. 1889, recorded in Lackawanna County Deed Book, No. 75, Page 400, etc., April 2nd, A. D. 1891.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked
481 as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of the Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten cents per ton in the said f. o. b. price
482 above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents' increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose on its own account and at such
483 prices as it shall see fit the excess of the sizes, of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employés and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under
484 this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove through a mesh 2 inches square and over a mesh 1⅜ inches square.

Chestnut through a mesh 1⅜ inches square and over a mesh ¾ inch square.

Pea through a mesh ⅜ inch square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2 or Rice through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respect-
485 ively a larger proportion of any smaller sizes than is usually present in good merchantable coal, and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes: that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.,) viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the Arbitration Board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the
486 coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at

mines, tested and approved by the Buyer and by the weighmasters approved by the Buyer, or upon the weigh-scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount
487 as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities, or other property of the railroad company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz.: C. D. Simpson, the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.
488 The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the

Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

489 In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

THE AUSTIN COAL COMPANY,
By W. G. ROBERTSON, *President.*

[Corporate Seal.]

Attest:

CHAS. W. MATTHEWS, *Secretary.*

THE LEHIGH VALLEY COAL COMPANY,
By ALFRED WALTER, *President.*

[Corporate Seal.]

Attest:

D. G. BAIRD, *Secretary.*

STATE OF PENNSYLVANIA,
County of Lackawanna, ss:

Signed, sealed and acknowledged in my presence by the officers of the Austin Coal Company, this 26th of March, 1901.

[NOTARY SEAL.] AARON V. BOWER,
Notary Public.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

490 [*Answer Clarence Coal Co. Filed Jan. 6, 1908.*]

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of Clarence Coal Company Which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this defendant to appear in this honorable Court or to give this Court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

491 This defendant has not information sufficient for formation of a belief as to any of the matters alleged and set forth in plaintiff's petition (except as to some of the matters, as hereinafter set forth, alleged in subdivision (*a*) of section VII thereof) and it prays that the same so far as they may be material may be proven.

For its further answer to the said petition this defendant admits that, by agreement under seal dated March 23, 1903, made by and between it and Hillside Coal and Iron Company, a corporation of Pennsylvania, it sold, and agreed to deliver, to said Hillside Coal and Iron Company on cars at defendant's breaker in Luzerne County, Pennsylvania, all the anthracite coal thereafter mined from any of defendant's mines then opened or operated, or which defendant might thereafter open and operate, on the lands and mines then operated by defendant, in Pittston Township, Luzerne County, Pennsylvania, or which might thereafter be operated through said colliery, or other mines that might thereafter be opened by this defendant upon the same premises or other lands tributary thereto which this defendant might thereafter acquire or operate, and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, said Hillside Coal and Iron Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—de-

492 pending on the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

And this defendant avers that said agreement is, and always has been, what it purports to be, a bona fide agreement for the sale of coal at defendant's breaker in Pennsylvania, made within said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into in the exercise of the legal right and power of the parties thereto to make and perform such an agreement in Pennsylvania; that it was not entered into either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices, or to create, or to aid in creating a monopoly in the sale of anthracite coal; but that it was entered into by this defendant because, in the exercise of its business judgment, it believed and it still believes that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And by protestation not confessing or acknowledging all or any of the matters and things in said petition contained to be true in such manner and form as the same are therein alleged, save
493 as they are hereinbefore acknowledged and confessed, this defendant for a further and additional answer avers and alleges:

That it appears by said petition that this suit is brought against this defendant and the other persons and corporations named as defendants therein for distinct causes and matters in several and many of which this defendant is not interested or concerned, and that said petition is therefore multifarious.

That it appears by said petition that this suit is brought against this defendant and the other corporations and individuals named as defendants therein for distinct matters and causes, in several whereof the several defendants are not in any manner interested or concerned, and in respect whereof this suit can be proceeded against it to a hearing and decree without the presence of any of the other defendants, and that said petition is therefore wholly multifarious.

This defendant prays that it may, under the rules of court in such case made and provided, be permitted to avail itself of all matters of defense in law or in equity to the merits of the petition in its above answer set forth, of which it might have availed itself by demurrer or plea in bar with the same force and effect as though it had filed a separate demurrer or demurrers or plea or pleas in bar.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendants may be by said petition or amended petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make an-
494 swer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] CLARENCE COAL COMPANY,
By DAVID BOSMAN, *Secretary.*

HERBERT A. TAYLOR,
Solicitor for Defendant.

495 EXHIBIT A.

This agreement, made and executed in the city of Philadelphia, Penna., this 23rd day of March, Nineteen hundred and three, between the Clarence Coal Company, (hereinafter called the Seller), party of the first part, and the Hillside Coal and Iron Company (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz.: being part of lots 20 and 21 in the Second Division of Certified Pittston Township (now Jenkins Twp.), Luzerne County, Penna., containing about 150 acres and more fully described in lease to F. C. Sturges dated Feb'y 24, 1893, and recorded in the office for recording deeds, &c. in and for said County in D. B. No. 331 at page 289 &c. Also all of lots numbered 18 and 19 in said Second Division of Certified Pittston Township, the transfer of the right to mine the coal therein to said Seller having been agreed to by the Hillside Coal & Iron Company, the Traders Coal Co. and N. Y., S. & W. Coal Co.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will
496 require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the

Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees
497 to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea Coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty Cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent, until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent, until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea Coal.

498 For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size
499 sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th) for all coal delivered by the Seller under this contract during the preceding calendar month. Pro-
500 vided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector, to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4″ square and over a mesh 2¾″ square.

Egg through a mesh 2¾″ square and over a mesh 2″ square.

Stove through a mesh 2″ square and over a mesh 1⅜″ square.

Chestnut through a mesh 1⅜″ square and over a mesh ¾″ square.

Pea through a mesh ¾″ square and over a mesh ½″ square.

501 Buckwheat No. 1 through a mesh ½″ square and over a mesh ¼″ square.

Buckwheat No. 2 or Rice through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1 more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.), viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buck-

502 wheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the

chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to
503 remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees
504 named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railway Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity

to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller, viz., Edward S. Delph; the President of the Buyer
505 Company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before the execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall
506 reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the Permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In Witness Whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

CLARENCE COAL COMPANY,
By THOS. F. WELLS, *President.*

Attest:
[SEAL.] CLARENCE B. STURGES, *Secretary.*

HILLSIDE COAL AND IRON COMPANY,
By F. D. UNDERWOOD, *Its President.*

Attest:
[SEAL.] G. A. RICHARDSON, *Secretary.*

Signed, Sealed and Delivered in the Presence of
L. MARSHALL.
DAVID BOSMAN.

507 [*Answer Nay Aug Coal Co. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
THE READING CO., THE NAY AUG COAL CO., et al., Defendants.

The Separate Answer of the Nay Aug Coal Co. to the Petition of the United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had herein been set forth, by way of plea or demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto, or as much thereof as it is advised it is material or necessary for it to make answer unto, says:

508 This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's several allegations set forth in the plaintiff's petition, except as to some of the matters as hereinafter set forth, alleged in subdivision A of the seventh paragraph thereof.

This defendant company admits that on the second day of February, A. D. 1901, it entered into an agreement under seal by and between itself, a Corporation of the State of Pennsylvania, and The Hillside Coal and Iron Company, also a Corporation of said state, in terms the same as "Exhibit A" set forth in, and a part of, the plaintiff's bill in this cause, whereby it sold and agreed to deliver to the said The Hillside Coal and Iron Company, on cars at defendant's breaker in the Borough of Dunmore, Lackawanna County, Pennsylvania, all the coal which it should mine from its mine then opened and operated, or mine which it might thereafter open and operate, as well as coal which should be reclaimed on culm banks on the following described tract of land: All that portion of the Edward Spencer tract of land situate in the Borough of Dunmore, Lackawanna County, Pennsylvania, bounded northwesterly by the fault which runs through the coal in said land, and southeasterly by Roaring Brook; and the culm pile on said tract on the southeasterly side of said Roaring Brook; being the same premises leased and con-

509 veyed to C. E. Bradbury, et al. by lease from Executors of Edward Spencer, deceased, dated August 11th, 1891, recorded in Recorder's office in Lackawanna County, in D. B. No. 83, page 222; and by said C. E. Bradbury, et al. assigned to said Nay Aug Coal Company, by assignment dated January 12th, 1894, recorded in said office in D. B. 110, page 507.

And this defendant avers that said contract was entered into in

good faith on its part and for the purpose of obtaining fair prices for its coal; that the rates payable therefor are no more than a reasonable compensation for said coal and no more than the same is and has been fairly worth at this defendant's breaker since the date of its contract; that the method of fixing the rate on the percentage basis was deemed by this defendant as fair to both parties—a method in use for a number of years to determine the wages of miners and in some cases the freight charge.

Under the arrangement this defendant is relieved of many of the risks and uncertainties of the coal business and of the trouble and expense of personal attention to sales. These were moving considerations for the making of said contract.

This defendant further avers that said contract was entered into independently of all other producing companies or persons
510 engaged in the coal trade and without any agreement or understanding with any of them except, as aforesaid, The Hillside Coal and Iron Company with which it contracted, and was without any purpose to stifle competition or to violate or evade the provisions of the Act of Congress approved 2d July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

This defendant further shows to the Court that the contract in question was made between corporations of the State of Pennsylvania, that the sale and delivery of said coal and performance of said contract are and were intended by the express terms of said contract to be wholly within the said State.

This defendant submits to the consideration of the Court that the sales of coal under a contract so made, between parties so situated, and to be so performed, is not trade and commerce between states, and is not embraced within the Act of Congress of 2d July, 1890.

This defendant denies any and all matters of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit, violated said Act or in any manner offended against the law of the land.

511 And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

THE NAY AUG COAL CO.,
By JOHN W. FOWLER, *President.*

THOS. F. WELLS, *Solicitor.*

512 [*Answer Green Ridge Coal Co. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendant.

Separate Answer of The Green Ridge Coal Company, which Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the Petition herein filed for or by reason of the matters or things that appear on the face thereof, and particularly the objections thereto that the said petition shows no violation of any statute of the United States, and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

513 This defendant admits and alleges that it is a corporation organized and doing business under the laws of the State of Pennsylvania, with a place of business at Scranton, Pa.

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in the Plaintiff's Petition, and amended petition, except some of the matters alleged in subdivision (*a*) of Paragraph VII thereof, and for answer thereto this defendant says:

This defendant admits that by agreement under seal, dated the first day of November, 1900, made by and between it and The Hillside Coal & Iron Company, a corporation of Pennsylvania, it sold and agreed to deliver to said company, on cars at defendant's breaker at Scranton, Lackawanna County, Pa., all the anthracite coal thereafter mined from any of this defendant's mines, then opened or operated, or which this defendant might thereafter open or operate on the lands described in deed from O. S. Johnson and wife to The Green Ridge Coal Company, dated January 8th, A. D., 1898, and recorded the 21st day of January, A. D., 1901, in the Recorder's office of Lackawanna County, Pa., at Scranton, in Deed Book No. 194, page 79 etc.; and also all coal which should be reclaimed from culm banks on said premises; and that in consideration thereof the said The Hillside Coal & Iron Company agreed therein to pay for said coal when prepared in accordance with the standard in said agreement set forth, and delivered f. o. b. railroad cars at the breaker; prices per ton for the several sizes of coal to be ascer-

514 tained by certain named percentages depending on the several respective sizes on the general average free on board prices on

said sizes received at tide points at or near New York between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement, marked "Exhibit A" is hereto attached, which it is prayed may be taken as a part of this answer.

And this defendant avers that said agreement is and always has been what it purports to be, a bona fide agreement for the sale of coal at this defendant's breaker in Pennsylvania, made within said commonwealth with a corporation of said commonwealth, and to be fully therein performed; that it was entered into by this defendant in the exercise of its legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce, or stifle competition, or to fix or maintain prices, or to create or aid in creating a monopoly in the sale of anthracite coal, but that it was entered into by this defendant without any plan, purpose or intent to restrain trade or commerce, or stifle competition, or to fix or maintain prices, or to create or aid in creating a monopoly in the sale of anthracite coal, but that it was entered into by the defendant solely because in the exercise of its business judgment,
515 considering the various vicissitudes, risks, and uncertainties connected with the marketing of anthracite coal, it was to its best interest and advantage to make said agreement.

And this defendant denies all, and all manner of unlawful agreement, combination, conspiracy and confederacy with which it or the other defendants may be, by Paragraph VII (*a*) of said Petition charged, without this, that any other matter or thing in the plaintiffs petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed and denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this court shall direct; and prays to be hence dismissed with its reasonable cost and charges in this behalf most wrongfully sustained.

THE GREEN RIDGE COAL COMPANY,
By O. S. JOHNSON, *President.*

Attest:
[SEAL.] W. L. CONNELL, *Secretary.*

WELLES & TORREY,
Solicitors for Defendant.

516 EXHIBIT A.

This agreement, made and executed in duplicate, in the City of Philadelphia, Penna., this First day of November, Nineteen hundred (1900) between The Green Ridge Coal Company, a corporation of Pennsylvania (hereinafter called the Seller), party of the first part, and The Hillside Coal and Iron Company (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:

All the land described in deed from O. S. Johnson and wife to The Green Ridge Coal Company, dated January 8th, A. D., 1898, and recorded the 21st day of January, A. D., 1901, in the Recorder's office of Lackawanna County, Pennsylvania, at Scranton, in Deed Book No. 194, page 79 etc.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will
517 permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any *of any* quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth and delivered f. o. b. railroad cars at the breaker:

518 For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of White Ash coal received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and

for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

519 For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent. when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. Then general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than

520 the 8th of each month a statement of the quantity of each size of each character of coal sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal of each character from the Schuylkill region, and the accountant each month shall make a true average price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant of the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant

shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Sellers' colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or
521 before the twelfth (12-) of each month, and the balance on or before the twentieth (20th.), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

Broken through a mesh 4 inches square and over a mesh 2¾ inch-square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove through a mesh 2 inches square and over a mesh 1⅜ inch square.

522 Chestnut through a mesh 1⅜ inch equare and over a mesh ¾ inch square.

Pea through a mesh ¾ inch square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2 or Rice through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is especially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of

larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1 more than fifteen (15) per cent of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock, and fire-clay), viz:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

523 Nor more than the following percentages of bone (containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.), viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in

524 that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and in case any coal is condemned and rejected by the inspector on ac-

count of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master
525 at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employés of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property, of the Railway Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for nonfulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

526 Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons: One person selected by the Seller, viz: E. B. Sturges; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and if the Board decided that the Seller can not operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time
527 or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to the price being less than $3.00, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

THE GREEN RIDGE COAL COMPANY,
By O. S. JOHNSON, *President.*

Attest:
W. L. CONNELL, *Secretary.* [SEAL.]

THE HILLSIDE COAL & IRON COMPANY,
By G. M. CUMMING, *President.*

Attest:
J. W. MIDDLETON, [SEAL.]
Ass't Secretary.

Signed, Sealed and Delivered in the presence of:
JOHN CORRIGAN.
MARK EDGER.

528 [*Ans. Lackawanna Coal Co., Ltd. Filed Jan.* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING CO. et al., Defendants.

Separate Answer of the Lackawanna Coal Company, Limited, which has been Made One of the Parties Defendant in this Proceeding.

This Defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this Defendant to appear in this Honorable Court or to give this Court jurisdiction as to this Defendant, for answer thereunto, or to so much thereof as this Defendant is advised it is material or necessary for it to make answer unto, says:

This Defendant is an utter stranger to all and singular the matters and things alleged and set forth in Plaintiff's petition, and has not information for a formation of a belief as to any of the matters alleged and set forth in the Plaintiff's petition or the amendment thereto, except some of the matters alleged in sub-division (*a*) of paragraph VII thereof; and for answer thereto this Defendant says:

This Defendant admits that, by agreement under seal dated August 27, 1901, made by and between it and the Delaware,
529 Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania, it sold and agreed to deliver to the said Delaware, Lackawanna and Western Railroad Company, on cars at Defendant's breaker at Blakely, in the State of Pennsylvania, all the Anthracite coal thereafter mined from any of Defendant's mines, in the territory described in said agreement, then opened or operated, or which Defendant might thereafter open and operate on the lands and mines then operated by the Defendant at Blakely, in Lackawanna County, or which might thereafter be opened through said colliery on said premises, or other mines that might thereafter be opened by this Defendant upon the same premises or other lands tributary thereto which this Defendant might thereafter acquire or operate, and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, the said the Delaware, Lackawanna and Western Railroad Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the

several sizes of coal to be ascertained by certain named percentages—depending upon the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

This Defendant also admits that, by agreement under seal, dated October 21, 1903, made by and between it and the Hillside Coal and Iron Company, a corporation of Pennsylvania, it sold and agreed to deliver to said Hillside Coal and Iron Company, on cars at Defendant's breaker at Blakely, in the County of Lackawanna, all the anthracite coal thereafter mined from any of Defendant's mines described in said agreement, then opened or operated, or
530 which Defendant might thereafter open and operate on the lands and mines then operated by the Lackawanna Coal Company, Limited, at Blakely, in the County of Lackawanna, in the State of Pennsylvania, or which might thereafter be operated through said colliery or other mines that might thereafter be opened by this Defendant upon the same premises or other lands tributary thereto which this Defendant might thereafter acquire or operate; and that, in consideration thereof, said Hillside Coal and Iron Company agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—depending on the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit B" is hereunto attached, which it is prayed may be taken as part of this answer.

And this Defendant avers that said agreements are and always have been what they purport to be, bona fide agreements, for the sale of coal at Defendant's breaker in Pennsylvania, made within said Commonwealth with corporations of said Commonwealth and to be fully therein performed; that they were entered into by this Defendant in the exercise of its legal right and power to make and perform such agreements in Pennsylvania; that they were not entered into by this Defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or nature whatsoever; that they were entered into by this Defendant without any plan, purpose or intent to restrain trade or commerce, or to stifle competition, or to fix or maintain prices, or to create or to aid in creating a monopoly in the sale of anthracite coal; but that they were
531 entered into by this Defendant solely because in the exercise of its business judgment it believed and it still believes that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to its best interests and advantage to make said agreements.

And this Defendant further answering says:

That the coal, mentioned in Exhibit B hereunto attached, and the land from which said coal is being mined was prior to the making of said agreement the property of the Hillside Coal and Iron Company, by which company the said coal was leased to this Defendant.

And this Defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which it, or the other Defendants may be by paragraph seven (*a*) of said petition charged, without this that any other matter or thing in the Plaintiff's petition contained material for this Defendant to make answer unto, and not herein — hereby well and sufficient answered, confessed or denied, is true to the knowledge and belief of this Defendant.

All of which matters this Defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

LACKAWANNA COAL COMPANY,
LIMITED,
By GEORGE L. HOUSER, *Secretary.*

WILLARD, WARREN & KNAPP,
Solicitor- for Defendant.

532 EXHIBIT A.

This agreement, made and executed in the City of Philadelphia, Penna., this 27th day of August, Nineteen hundred and one, between The Lackawanna Coal Company, Limited, (hereinafter called the Seller), party of the first part, and The Delaware, Lackawanna and Western Railroad Company, (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this Contract, and any which shall be reclaimed from culm banks on said premises, viz.: The lands described in leases and deeds dated and recorded in Lackawanna County, State of Pennsylvania, as follows:

Lease from H. S. Pierce, et al., dated June 27, 1881; recorded Deed Book No. 10, page 50, etc.

Lease from Almira Lillibridge, et al., dated March 24, 1883; recorded Deed Book No. 136, page 82, etc.

Deed from Maria B. Hull, et al., dated June 8, 1894; recorded Deed Book No. 114, page 156, etc.

Deed from G. W. Brainard, et al., dated June 29, 1883; recorded Deed Book No. 125, page 235, etc.

Lease from The Hillside Coal and Iron Company, dated November 20, 1886; recorded Deed Book No. 42, page 235, etc.

Lease from The Hillside Coal and Iron Company, dated May 28, 1895, and not recorded.

Lease from the Delaware and Hudson Canal Company, dated August 1, 1898; recorded Deed Book No. 166, page 379, etc.

Deed from Albert B. Russell and wife, dated July 12, 1898; recorded Deed Book No. 163, page 435, etc.

533 Deed from W. R. Williams and wife, dated February 1, 1899; recorded Deed Book No. 168, page 503, etc.

Lease from Thomas Davis, dated March 1, 1900, and not recorded.

Lease from Alrec Berry and others, dated May 5, 1883, and not recorded.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter in the calendar year.

534 Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage of pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal at a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five (5) cents per ton; but it is understood
that the Buyer shall have the option to decline to take these
535 smaller sizes in excess of the proportion taken from the
Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of — its own account at such prices at it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the — region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deduction for
commissions, demurrage or any other charges.

536 Fourth. It is understood and agreed that the Seller shall
have the right to sell and dispose of, at retail, on its own ac-

count, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

537 Stove through a mesh 2 inches square and over a mesh 1⅜ inches square.

Chestnut through a mesh 1⅜ inches square and over a mesh ¾ inch square.

Pea through a mesh ¾ inch square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2 or Rice through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a large size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal, and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more

than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of mixed carbon ranging between forty (40) and sixty-five (65) per cent.,) viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

538 Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expenses involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the Arbitration Board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector

539 on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at

mines, tested and approved by the Buyer and by the weighmasters approved by the Buyer, or upon the weight-scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities, or other property of the railroad company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to
540 be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz.: W. J. Richards; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and if the Board decides that the Seller cannot oper-

ate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per
541 ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Signed, Sealed and Delivered in the Presence of

THE LACKAWANNA COAL CO., L'T'D,

(Signed) By S. B. THORNE, *Chairman.*

Attest:

[CORPORATE SEAL.]

(Signed) A. F. LAW, *Secretary.*

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,

(Signed) By W. H. TRUESDALE, *President.*

Attest:

[CORPORATE SEAL.]

(Signed) FRED F. CHAMBERS, *Secretary.*

542 EXHIBIT B.

This agreement, made and executed in the City of Scranton, State of Pennsylvania, this 21st day of October, Nineteen hundred and three between The Lackawanna Coal Company, Limited, (hereinafter called the Seller), party of the first part, and The Hillside Coal and Iron Company, (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Seller hereby sells and agrees to deliver on cars at the breaker to the Buyer all the Anthracite coal hereafter mined from

the London and Woodbridge tracts, conveyed to the Temple Iron Company by the Hillside Coal & Iron Company by an indenture of lease dated May 24th, 1902; this agreement to sell being made in compliance with the tenth section of said lease.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth day of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the
543 Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President, for the time being, of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1 forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until

the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall ad-
544 vance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned.

Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents' increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five (5) cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two Dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold
545 during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Wyoming region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average price thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received *its* meant, without any deductions for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least One Dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of its intention to terminate this contract, unless payment shall be made in the meantime, but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

546 Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz:

Broken through a mesh 4 inches square and over a mesh 2¾ inches square.

Egg through a mesh 2¾ inches square and over a mesh 2 inches square.

Stove through a mesh 2 inches square and over a mesh 1⅜ inches square.

Chestnut through a mesh 1⅜ inches square and over a mesh ¾ inch square.

Pea through a mesh ¾ inch square and over a mesh ½ inch square.

Buckwheat No. 1 through a mesh ½ inch square and over a mesh ¼ inch square.

Buckwheat No. 2, or Rice, through a mesh ¼ inch square and over a mesh ⅛ inch square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is especially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten (10) per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five per cent. of Rice, nor Buckwheat No. 1 more than fifteen (15) per cent. of Rice.

547 Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse, (consisting of slate, rock and fire-clay), viz:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per

cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of mixed carbon ranging between forty (40) and sixty-five (65) per cent.), viz:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal qualities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car.

548 In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal taken from the tracts conveyed by the lease referred to in section first of this agreement (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its — preparation, the Seller will re-prepare the same until it conform to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2,240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master

at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignee named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifests and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employés of either party, or by reason of injury to the works, buildings, fixtures, railroad terminal facilities or other property of the Railroad Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quality to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz., W. J. Richards; the President of the Buyer Company to be the second person, and the President for the time being, of Girard Trust Company to be the third person.

The name of the person to represent the Seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mine without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times

the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty Cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty Cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to the price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

551 Signed, sealed and delivered in the presence of:

THE HILLSIDE COAL & IRON COMPANY,

(Signed) By F. D. UNDERWOOD, *President.*

Approved as to form

(Signed) G. F. B.,

Gen'l Solicitor.

10-26-03.

Attest:

[CORPORATE SEAL.]

(Signed) DAVID BISMAN,

Ass't Secretary.

THE LACKAWANNA COAL CO., LTD.,

(Signed) By A. F. LAW, *Chairman.*

Attest:

[CORPORATE SEAL.]

(Signed) GEO. L. HOUSER, *Secretary.*

552 [*Answer Dolph Coal Co., Ltd. Filed Jan.* 3, 1908.]

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,

vs.

READING COMPANY et al., Defendants.

The Separate Answer of The Dolph Coal Company, Limited, to the Petition of The United States of America.

This defendant, reserving all manner of objection and exception to the said petition as fully as if the same had been herein set forth,

by way of plea or demurrer, and particularly the objection thereto that said petition shows no violation by this defendant of any statute of the United States, for answer thereto, or as much thereof as it is advised it is material or necessary for it to make answer unto, answering says:

This defendant has not sufficient knowledge or information which enables it to admit or deny the plaintiff's several allegations set forth in the plaintiff's petition, except as to some of the matters herein set forth, alleged in subdivision A, of the seventh paragraph thereof.

553 This defendant admits that by agreement under seal, dated 14 April, 1904, made by and between itself, a corporation of the State of Pennsylvania, and the Hillside Coal and Iron Company, likewise a corporation of said State, it sold and agreed to deliver to the said Hillside Coal and Iron Company, on cars at defendant's breaker in Winton Borough, Lackawanna County, Pennsylvania, seventy-two per cent. (72%) of all the Anthracite coal mined and prepared (or reclaimed from culm banks) by it or its successors or assigns, from certain premises situate in said county, de-cribed in said contract, within a period of two years after the date of the agreement, and thereafter until the agreement is terminated by six months' notice given by either party to the other at any time after the expiration of six months from the date of the agreement, upon substantially the terms set forth in the Agreement marked "Exhibit A" in plaintiff's bill of complaint, and also by an agreement made the 30th day of November, 1895, between the said Dolph Coal Company, Limited, and the New York, Susquehanna & Western Coal Company, also a corporation of the State of Pennsylvania, covering the coal to be mined from a tract of land in said county, in said agreement described, upon substantially the same terms as set forth in said "Exhibit A," but said printed form contains some stipulations not embodied in said contract, and for greater certainty the defendant prays leave to produce and introduce in evidence at the hearing said written contracts, in order that any material difference between their provisions and said printed form may be made manifest.

And this defendant avers that the said contracts were entered into in good faith on its part and for the purpose of obtaining fair prices for its coal; that the rates payable therefor are no more than a reasonable compensation for said coal and no more than the same is fairly worth at this defendant's breaker since the date of its contract; that the method of fixing the rates on the percentage basis was deemed by this defendant as fair to both parties—a method in use
554 for a number of years to determine the wages of miners and in some scales the freight charges.

Under the arrangement this defendant is relieved of many of the risks and uncertainties of the coal business and of the trouble and expense of personal attention to sales. These were moving considerations for the making of said contracts.

This defendant further avers that said contracts were entered into independently of all other producing companies or persons engaged in the coal trade and without any agreement or understanding with

any of them except, as aforesaid, the Hillside Coal and Iron Company and the New York, Susquehanna & Western Coal Company, with which it contracted, and were without any purpose to stifle competition or to violate or evade the provisions of the Act of Congress approved 2nd July, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

This defendant further shows to the Court that the contracts in question were made between corporations of the State of Pennsylvania, that the sale and delivery of said coal and performance of said contracts are, and were intended by the express terms of said contracts, to be wholly within the said State.

This defendant submits to the consideration of the Court that the sales of coal under contracts so made, between parties so situated, and to be so performed, is not trade and commerce between States, and is not embraced within the Act of Congress of 2nd July, 1890.

This defendant denies any and all matters of unlawful agreement, combination, conspiracy and confederacy with which it is or may be by said petition charged, and denies that it has in any respect, either in letter or in spirit, violated said Act or in any manner offended against the law of the land.

555 All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE DOLPH COAL COMPANY, LIMITED,
By W. G. PAYNE, *President.*

ISAAC P. HAND,
HENRY W. PALMER,
Solicitors.

556 [*Answer A. Pardee & Co. Filed Dec.* 31, 1907.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA
vs.
THE READING COMPANY et al.

Joint and Separate Answer of Mary W. F. Howe, Frank Pardee, and Sarah Drexel Van Rensselaer, Executrix under the Will of John R. Fell, Deceased, Co-partners, Trading as A. Pardee & Co.

1. We admit that we are co-partners trading as A. Pardee & Co., engaged in the business of mining and selling anthracite coal, with a place of business at Hazleton, Pennsylvania.

2. We also admit that under date of July 9th, 1901, we signed a contract with the Lehigh Valley Coal Company, similar in form to

that set out as "Exhibit A" with the petition filed in this cause. We had no intention or desire in making said agreement to enter into any conspiracy, combination or other device for the purpose of stifling competition or creating a monopoly in the sale of an-
557 thracite coal, as alleged in the said petition. Said contract was merely a contract for the sale of the coal mined by us. We entered into the said contract because we believed it was to our interest as miners of coal to sell the same under the terms of said agrement.

3. We have no knowledge as to the other matters set out in the petition and the amendment thereto, and pray that if material the same may be duly proved.

4. We are advised by counsel and therefore aver, that we are not proper parties to this cause, or to any relief prayed therein.

5. We pray to be hence dismissed with our reasonable costs in this behalf most wrongfully sustained.

MARY W. F. HOWE,
FRANK PARDEE,
SARAH DREXEL VAN RENSSELAER,
Executrix under the Will of John R. Fell, Deceased,
Co-partners, Trading as A. Pardee & Company.

558 [*Answer Lentz & Co. Filed Jan.* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

The Joint and Separate Answer of Lafayette Lentz, William O. Lentz, and Lewis A. Riley, Co-partners Trading Under the Name of Lentz & Company, to the Petition of the United States of America.

These defendants, reserving all manner of objection and exception to the said petition as fully as if the same had herein been set forth by way of plea or demurrer, f[illegible]nswer thereto or as much thereof as they are advised it is mate[illegible] or neccessary for them to make answer unto, answering, say:—

These defendants admit that by agreement under seal dated January 24th, 1901, made by and between them and Lehigh Valley Coal Company, a corporation of Pennsylvania, sold and agreed to deliver the said Lehigh Valley Company on cars at defendants' breaker in Schuylkill *Coal* County, of Pennsylvania, all the anthracite coal thereafter mined from any of the mines then or thereafter operated by them during the continuance of said agreement,

as will more fully appear by the inspection of said agreement, copy of which is hereto annexed marked "Exhibit A," which respondents pray may be taken as part of this answer.

559 These defendants aver that said agreement correctly and truly represented the transaction between these defendants and the said company, which was simply a contract of purchase on the part of the said company and contract of sale on the part of these defendants; so far as they were interested in the matter they were only concerned to get a fair price for their coal. The method of fixing it by a percentage of the price of coal at tide water was familiarly known in the region, as for many years it had been the method of determining the wages to be paid to the miners, and in some cases the method of determining the amount of freight to be paid. The plan had the great advantage that it relieved the respondents from the expense of maintaining their own agency for the sale of coal at tide water and of giving more or less of personal attention to the sales, and, what was still more important, in insured the payment of the price without any appreciable risk of loss. These were the reasons which led the respondents to enter into the contract, and they were not party or privy to the purposes or motives of their vendee, except as in the case of every sale of any commodity it is to be assumed that the purchaser expected to make a profit in some way out of the transaction.

These defendants further show that the sale and delivery of the said coal have always been and were intended to be completed at the place and in the county and within the State where made, and so far as the interest or part of these defendants is involved, such sales cannot by any possibility be distorted into interstate transactions or made to constitute in any respect a part of the commerce between States and, in fact, a large and possibly the larger part of the coal sold and delivered by these defendants has been received and used by consumers within the State of Pennsylvania.

These defendants deny all and all manner of unlawful agreement, combination, conspiracy, and confederacy with which they are or may be by said petition charged, without this that any other

560 matter or thing in the plaintiff's petition contained material for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, or denied, is true to the knowledge and belief of these defendants.

All which matters these defendants are ready to maintain and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LENTZ & CO.
LEWIS A. RILEY.

S. DICKSON,
Solicitor for Defendants.

561 [*Answer Robertson & Law. Filed Jan. 7, 1908.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of John M. Robertson and William Law, Named as Co-partners Trading Under the Firm Name of Robertson & Law, which Said Co-partnership has Been Made One of the Parties Defendant in this Proceeding.

This defendant, saving and reserving unto itself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient
562 to show any cause for citing this defendant to appear in this Honorable Court or to give this Court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, says:

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in plaintiff's petition, except some of the matters alleged in subdivision (*a*) of paragraph VII thereof; and for answer thereto this defendant says:

This defendant admits that on the first day of November, 1900, said John M. Robertson and William Law were co-partners trading under the firm name of Robertson & Law, and on said date said defendant firm entered into an agreement with the Hillside Coal and Iron Company, a Pennsylvania corporation, similar to the agreement set forth in plaintiff's petition and marked, "Plaintiff's Exhibit A," and this defendant avers that said agreement was an agreement for the sale and delivery of all the coal, which it might at the time own or hold under lease, or which it at any time thereafter might own or lease, at its breaker in the State of Pennsylvania, made within said Commonwealth, with a corporation of said Commonwealth, to be fully therein performed; that it was not
563 entered into by this defendant either in pursuance of or in furtherance of any combination or conspiracy of any kind or character whatsoever, nor with any intent or purpose or plan to restrain trade or commerce, or to stifle competition, or to fix or maintain prices, or to create or to aid in creating a monopoly in the sale of anthracite coal, but it was entered into because at the time the said defendant firm believed it was for its best interest and advantage to do so; that at the time said agreement was made, to wit,

on the first day of November, 1900 this defendant owned no coal nor had it a lease of any coal, nor has it at any time since owned or leased any coal.

And this defendant further avers that on the 27th day of April, 1904, by the mutual agreement of the said parties said defendant co-partnership was dissolved and ended; that at no time during the existence of said co-partnership nor at any other time did the said defendant sell and deliver any coal under said contract of November 1, 1900 or in any way act under or in pursuance of the same. The only coal at any time mined by said defendant firm was coal owned by the Hillside Coal and Iron Company, which the said defendant firm mined and prepared for market as contract miners for said company.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which
564 it is or may be by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

JOHN M. ROBERTSON AND
WILLIAM LAW,
Named as Co-partners Trading Under the Firm Name of Robertson & Law,
By W. H. JESSUP, *Their Solicitor.*

565 [*Answer Richard White. Filed Jan.* 15, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Separate Answer of Richard White, Who Has Been Made One of the Parties Defendant in This Proceeding.

This defendant, saving and reserving unto himself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does not set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court

or to give this court jurisdiction as to this defendant, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, says:—

This defendant is an utter stranger to all and singular the matters and things alleged and set forth in plaintiff's petition, except some of the matters alleged in subdivision (*a*) of paragraph VII thereof; and for answer thereto this defendant says:—

566 This defendant admits that, by agreement under seal dated October 15th, 1901, made by and between him, the said Richard White, W. R. McTurk and Robert White, trading as E. White Company, and The Philadelphia and Reading Coal and Iron Company, a corporation of Pennsylvania, said E. White Company sold, and agreed to deliver, to said The Philadelphia and Reading Coal and Iron Company, on cars at defendant's breaker in New Castle Township, Schuylkill County, Pennsylvania, all the anthracite coal thereafter mined from any of defendant's mines then opened or operated, or which defendant might thereafter open and operate, on the lands and mines then operated by the Howard Colliery, in New Castle Township, Schuylkill County, Pennsylvania, or which might thereafter be operated through said colliery, or other mines that might thereafter be opened by this defendant upon the same premises or other lands tributary thereto which this defendant might thereafter acquire or operate and also all coal which should be reclaimed from culm banks on said premises; and that, in consideration thereof, said The Philadelphia and Reading Coal and Iron Company, agreed therein to pay for said coal, when prepared in accordance with the standard in said agreement set forth and delivered f. o. b. railroad cars at the breaker, prices per ton for the several sizes of coal to be ascertained by certain named percentages—depending on the several respective sizes—of the general average free-on-board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as provided in said agreement.

A copy of said agreement marked "Exhibit A" is hereto attached, which it is prayed may be taken as part of this answer.

And this defendant avers that, while said contract was made with this defendant and W. R. McTurk and Robert White, trading as E. White Company, neither said W. R. McTurk nor Robert White ever had or now has any interest in the said firm, the sole member thereof, and therefore the sole beneficiary of said contract of said firm, being this defendant.

567 And this defendant avers that said agreement is, and always has been, what it purports to be, a bona fide agreement for the sale of coal at defendant's breaker in Pennsylvania, made within said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into by this defendant in the exercise of his legal right and power to make and perform such an agreement in Pennsylvania; that it was not entered into by this defendant either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by this defendant without any plan, purpose

or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create, or to aid in creating a monopoly in the sale of anthracite coal; but that it was entered into by this defendant solely because, in the exercise of his business judgment, he believed, and he still believes, that, considering the various vicissitudes and risks and uncertainties connected with the marketing of anthracite coal, it was to his best interest and advantage to make said agreement.

And this defendant denies all and all manner of unlawful agreement, combination, conspiracy and confederacy with which he is or may be by said petition charged, without this that any other matter or thing in the plaintiff's petition contained material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or denied, is true to the knowledge and belief of this defendant.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

RICHARD WHITE.

J. C. BEDFORD,
Solicitor for Defendant.

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EXHIBIT A.

This Agreement, made and executed in the city of Philadelphia, Penna., this 15th day of October, Nineteen hundred and one, between Richard White, W. R. McTurk and Robert White, trading as E. White Company (hereinafter called the Seller), party of the first part, and The Philadelphia & Reading Coal and Iron Company, (hereinafter called the Buyer), party of the second part, Witnesseth:

First. The Seller hereby sells, and agrees to deliver on cars at breaker to the Buyer, all the Anthracite coal hereafter mined from any of its mines now opened and operated, or which it may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz:—

The lands and mines now operated by the Howard Colliery in New Castle Township, Schuylkill County, Pennsylvania, or which may hereafter be operated through said colliery, or other mines that may hereafter be opened by the Seller upon the same premises or other lands tributary thereto which may be hereafter acquired or operated by the Seller.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit. The Buyer to use its best efforts to find a market for the Seller's coal so as to enable the Seller's collieries to be worked as many days as practicable, with due regard to the general market con-

ditions, and to give orders for shipment which will enable the Seller to work its collieries as many days in each year as other collieries work similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or companies with which it has
569 contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the Anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the First of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Seller may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Seller agrees to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes of White Ash Coal, received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided, and the like proportion of said prices for special coals, when such special coals are shipped.

For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent. until the percentage paid for pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for
570 each advance of ten (10) cents per ton in the said f. o. b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50), after which the proportionate price paid the Seller shall advance one (1) per cent. for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the

price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is Two dollars ($2.00) per ton or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Seller shall have the right to sell and dispose of on its own account and at such prices as it shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1 when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory
571 to both parties, to whom the Buyer shall furnish not later than the 8th of each month, a statement of the quantity of each size of each character of coal sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal of each character from the Schuylkill region, and the accountant each month shall make a true average price for each size of each character of coal sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Seller, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Seller. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to Buyer and Seller.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

Fourth. It is understood and agreed that the Seller shall have the right to sell and dispose of, at retail, on its own account, coal for use and consumption of its employees and others in the immediate neighborhood of Seller's colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Seller's colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Seller under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Seller may, at its option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of

its intention to terminate this contract, unless payment shall
572 be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Seller without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well-sized and made through and over the following square screen meshes, or their equivalent, viz.:

Broken through a mesh 4" square and over a mesh 2¾" square
Egg through a mesh 2¾" square and over a mesh 2" square.
Stove through a mesh 2" square and over a mesh 1⅜" square.
Chestnut through a mesh 1⅜" square and over a mesh ¾" square.
Pea through a mesh ¾" square and over a mesh ½" square.
Buckwheat No. 1 through a mesh ½" square and over a mesh ¾" square.
Buckwheat No. 2 or Rice through a mesh ¼" square and over a mesh ⅛" square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is specially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger
sizes; that Chestnut coal shall not contain more than ten (10)
573 per cent. of Pea and five (5) per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1 and five (5) per cent. of Rice; nor Buckwheat No. 1, more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, eight (8) per cent.; Buckwheat, ten (10) per cent.

Nor more than the following percentages of bone [containing a proportion of fixed carbon ranging between forty (40) and sixty-five (65) per cent.], viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Seller shall prepare the coal so as to conform to such higher standard; provided, however, that the Seller shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as

to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party the inspector shall make two other tests of the coal in question, and the average of the three tests on
574 one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in that car. In case the inspector shall condemn coal which is believed by the Seller to be up to the standard, the Seller shall in that case make complaint to the General Superintendent of the Buyer, and, if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Seller. The cost of all inspections shall be equally divided between the parties hereto, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Seller will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Seller's mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the inspector on account of its preparation, the Seller will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Seller under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer and by the weigh-masters approved by the Buyer, or upon the weigh-scales of the Railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weigh-master at said scales. An allowance for waste shall be made of such amount as is currently allowed by the Railroad Company transporting the coal, but not exceeding one (1) per cent.

575 Eleventh. The Seller will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct, and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Seller will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the Railway

Company or Companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a Board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Seller—viz., The President of the Seller Company; the President of the Buyer company to be the second person; and the
576 President for the time being of Girard Trust Company to be the third person.

The name of the person to represent the seller shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this Agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this Agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Seller is unable to operate its mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Seller may submit the questions involved to the said Board of Arbitration, and, if the Board decides that the Seller cannot operate its mines without loss on the basis of this contract, and if the Buyer and Seller cannot agree on a modification of this contract then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than Three Dollars and Fifty cents ($3.50) per ton, then the Seller may at its option temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach Three Dollars and Fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Seller to the Buyer; and, if any question arises as to the price being less than $3.50, it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of and binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

577 In witness whereof, the parties have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

RICHARD WHITE. [SEAL.]
W. R. McTURK. [SEAL.]
ROBERT WHITE. [SEAL.]

Signed, Sealed and Delivered in the Presence of
JOHN M. MITCHELL.

THE PHILADELPHIA & READING COAL AND IRON COMPANY,
By GEORGE F. BAER, *President.*

Attest:

[Seal of The Philadelphia and Reading Coal and Iron Company.]

W. G. BROWN, *Secretary.*

W. G. BROWN.
W. H. McEWAN.

578 [*Disclaimer, Robert White. Filed Jan.* 15, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

The Disclaimer of Robert White, Who Has Been Made One of the Parties Defendant in This Proceeding, to the Bill of Complaint Therein Filed.

This defendant, saving and reserving unto himself all objections and exceptions to the petition herein filed for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said petition shows no violation of any statute of the United States and does set forth facts sufficient to show any cause for citing this defendant to appear in this Honorable Court or to give this Court jurisdiction as to this defendant, says:

That he does not know that he, this defendant, to his knowledge and belief, ever had, nor did he claim or pretend to have,
579 nor does he now claim, any right, title or interest of, in or to the agreement under seal, dated October 15th, 1901, made by and between him, the said Robert White, Richard White, and W. R.

McTurk, trading as E. White Company, with The Philadelphia and Reading Coal and Iron Company, specifically referred to in the answer of Richard White filed in this proceeding and a copy whereof is attached to said answer; and avers that, while said contract was made with said three parties trading as E. White Company, this defendant has had no interest in said firm since the beginning of its operations under said agreement and that Richard White is the sole member of said firm; and this defendant does hereby disclaim all right, title and interest in and to the said agreement and in and to the premises therein referred to and every part thereof.

All which matters this defendant is ready to maintain and prove as this Court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ROBERT WHITE.

J. C. BEDFORD, *Solicitor.*

580 [*Answer, Jermyns. Filed Jan.* 6, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, Sitting in Equity, April Sessions, 1907.

Number 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Joint and Several Answer of Joseph J. Jermyn and George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, Executors of John Jermyn, Deceased, Who Have Been Made Parties Defendant in This Proceeding.

These defendants, saving and reserving unto themselves all objections and exceptions to the petition and amended petition herein filed, for or by reason of matters or things that appear on the face thereof, and particularly the objections thereto that said peti-
581 tion and amended petition show no violation of any statute of the United States and do not set forth facts sufficient to show any cause for citing these defendants to appear in this honorable court or to give this court jurisdiction as to these defendants, for answer thereunto or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, say.

This defendant, Joseph J. Jermyn, and his father, John Jermyn, about the year 1887 acquired by lease or conveyance, certain coal lands lying in the Township of Lackawanna, now in the Borough of Old Forge, in the County of Lackawanna and State of Pennsylvania, and proceeded to operate the same as a co-partnership under the firm name of Jermyn & Company, and continued to so operate the same until the death of the said John Jermyn, which occurred

on the 29th day of May, 1902. These defendants George B. Jermyn, Emma J. Jermyn and Joseph J. Jermyn, were named in the will of the said John Jermyn, and were duly appointed the executors of his last will and testament. As such executors, however, they have taken no part in nor have they any direct interest in the business of mining, preparing, selling and shipping coal from the said colliery, but the said business has been since the death of the said John Jermyn, and is still, carried on and conducted solely in the name of Joseph J. Jermyn, doing business as the surviving partner of Jermyn & Company.

These defendants, George B. Jermyn, Emma J. Jermyn and Joseph J. Jermyn, executors of John Jermyn, deceased, do, therefore, allege that they have no knowledge of or interest in, nor should they be required to answer to any of the matters or things alleged in the plaintiff's petition or its amended petition.

582 This defendant, Joseph J. Jermyn, answering for himself individually and as surviving partner of the firm of Jermyn & Company, is an utter stranger to all and singular the matters and things alleged and set forth in plaintiff's petition and amended petition, except some of the matters alleged in Sub-Division (*a*), Paragraph VII, and referred to and made more specific in the amended petition, and for answer to those matters he says.

Defendant admits that by agreement, under seal, dated the first day of November, 1900, made by and between John Jermyn and Joseph J. Jermyn of the one part, and the New York, Susquehanna and Western Coal Company, a corporation of the State of Pennsylvania, of the other part, they sold and agreed to deliver to the said, The New York, Susquehanna and Western Coal Company, on cars at their breaker at Rendham, Lackawanna County, Pennsylvania, all the anthracite coal thereafter mined from any of their mines then open or operated or which they might thereafter open and operate on the certain coal properties in the said contract described, situate in the Borough of Old Forge, in said County of Lackawanna, and also all coal which should be reclaimed from culm banks on said premises, and that in consideration thereof the said, The New York, Susquehanna and Western Coal Company, agreed therein to pay for said coal in accordance with the standard in said agreement set forth, and delivered f. o. b. railroad cars at the breaker, the price per ton for the several sizes of coal to be ascertained by certain named percentages depending on the several respective sizes of the general average free on board price of said sizes, received at tide-water points at or near New York between Perth Amboy and Edgewater, computed as provided in said agreement; a copy of said agreement marked Exhibit A is hereto attached, which it is prayed may be taken as a part of this answer.

583 This defendant further answers that prior to the first day of March, 1887, the coal lands operated by Jermyn & Company at its colliery were owned by the said, The New York, Susquehanna and Western Coal Company; that by an agreement under seal, dated the first day of March, A. D. 1887, recorded

in the office of the Recorder of Deeds in and for the County of Lackawanna in Deed Book No. 41, page 254, etc., the said, The New York, Susquehanna and Western Coal Company, demised, leased and to mine let to the said John Jermyn and Joseph J. Jermyn all the coal in, under and upon the premises therein described, upon royalties, terms and conditions in said agreement fully set forth, as by reference thereto, so recorded as aforesaid, will more fully and at large appear.

And this defendant, Joseph J. Jermyn, avers that the said agreement, dated November 1, 1900, Exhibit A, is and always has been what it purports to be, a bona fide agreement for the sale of coal at the breaker of Jermyn & Company in Pennsylvania, made within said Commonwealth with a corporation of said Commonwealth and to be fully therein performed; that it was entered into by Jermyn & Company in the exercise of their legal right and power to make and perform said agreement in Pennsylvania; that it was not entered into by Jermyn & Company either in pursuance or in furtherance of any combination or conspiracy of any kind or character whatsoever; that it was entered into by Jermyn & Company without any plan, purpose or intent to restrain trade or commerce or to stifle competition or to fix or maintain prices or to create or aid in creating a monopoly of the sale of anthracite coal; but that it was entered into by Jermyn & Company solely because in the exercise of the business judgment of the said co-partnership, and its members considering the various vicissitudes, risks and uncertainties connected with the marketing of anthracite coal, it was to their best interest and advantage to make said agreement.

584 And this defendant, Joseph J. Jermyn, denies all and all manner of unlawful combination, conspiracy and confederacy with which he or the co-partnership composing Jermyn & Company or the other defendants may be, by Paragraph VII (*a*) of the said petition or the amendment thereto, charged, without this *with* any other matter or thing in the plaintiff's petition or amended petition contained material for this defendant to make answer to and not herein and hereby well and sufficiently answered, confessed or denied as true to the knowledge of this defendant, Joseph J. Jermyn.

All of which matters these defendants are ready to maintain and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most unlawfully sustained.

(S'g'd) J. J. JERMYN,
Surviving Partner, Doing Business under the Firm Name of Jermyn & Co.
(S'g'd) J. J. JERMYN,
(S'g'd) GEO. B. JERMYN,
(S'g'd) EMMA J. JERMYN MEARS,
Executors of the Last Will and Testament of John Jermyn, Deceased.
WELLES & TORREY.
Solicitors for Defendants.

"EXHIBIT A."

This agreement, made and executed, in duplicate, in the City of Philadelphia, Penna., this first day of November, nineteen hundred (1900), between John Jermyn and Joseph J. Jermyn, of Scranton, Pennsylvania (hereinafter called the Sellers), parties of the first part, and The New York, Susquehanna and Western
585 Coal Company, a corporation of the State of Pennsylvania (hereinafter called the Buyer), party of the second part, witnesseth:

First. The Sellers hereby sell, and agree to deliver on cars at breakers to the Buyer, all the anthracite coal hereafter mined from any of their mines now opened and operated, or which they may hereafter open and operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on said premises, viz.:

The first thereof being situate in Lackawanna Township (now the Borough of Old Forge), County of Lackawanna, and State of Pennsylvania, and bounded and described as follows: Beginning at a corner in line of lands of Charles Drake and the line of the Certified Township of Pittston, and running thence south seventy-eight and one-half (78½) degrees west, about one hundred and sixteen (116) perches to a corner; thence north five and one-half (5½) degrees west, three hundred (300) perches to a corner in line of lands of Erastus Smith; thence by said lands south forty-three (43) degrees to a corner in line of lands formerly of Paul Stark; thence by said line south eighty-one and one-half (81½) degrees west, about twenty (20) perches to a corner in the main road; thence by said road south thirty-eight (38) degrees west, ten (10) perches to a corner; thence south six (6) degrees east, ninety-five and two-tenths (95.2) perches to a corner and the place of beginning. Containing about one hundred and fifty (150) acres of land. Being the same lands obtained under lease from the heirs of Thomas Smith to E. A. Coray, by indenture dated September 1st, A. D. 1867, and recorded in Luzerne County in Deed Book No. 120, page 187.

The *third* thereof: In Lackawanna Township (now the *the* Borough of Old Forge), State and County aforesaid,
586 bounded and described as follows: On the north by lands of Charles Drake, and the estate of Charles B. Drake, deceased; easterly by lands of Haynes Winters, lands of the estate of Z. Knapp, land of John Stewart, and lands late of Paul Stark; southerly by lands of heirs of Thomas Smith, deceased, and lands of E. A. Coray, and lands of Paul Allen; westerly by lands of Levick and Jenkins, and lands of The Delaware, Lackawanna and Western Railroad Company, late the Union Coal Company. Containing three hundred and fifty (350) acres of land, more or less. Being the same lands obtained from Erastus Smith under lease of E. A. Coray, dated January 1st, A. D. 1868, and recorded in Luzerne County, in Deed Book No. 123, page 48.

The third thereof: In Lackawanna Township (now the Borough of Old Forge), County and State aforesaid, bounded and described as follows, to-wit: Beginning at a corner of lands lately conveyed by H. H. Winters to E. A. Coray; thence by said lands south forty-six and three-quarters (46¾) degrees west, sixty (60) rods to a corner; thence north forty (40) degrees west, three hundred and fifty (350) perches to a hickory corner; thence north forty-eight and one-quarter (48¼) degrees east, twenty-five (25) rods to a stone corner; thence south forty (40) degrees east, one hundred and seventy-six (176) perches to a corner near the Back Road; thence north thirty-nine (39) degrees east, thirty-eight (38) perches to a corner in said road; thence north forty (40) degrees west, one hundred and sixty-eight (168) perches to a stone corner; thence north forty-eight and one-quarter (48¼- degrees east, nineteen and five tenths (19.5) rods to a stone corner; thence south forty (40) degrees east, two hundred and sixty-nine (269) perches to the middle of St. John's Brook; thence down said brook by the several courses thereof twenty-two (22) perches to a corner in a public road; and thence
587 along said road south, forty (40) degrees east, seventy-five (75) perches to a place of beginning. Containing one hundred and twenty-seven (127) acres and thirteen (13) perches of land, more or less. Being the same lands conveyed by Michael Terrick to E. A. Coray by deed dated July 1st, 1869, and recorded in Luzerne County in Deed Book No. 136, page 49.

The fourth thereof: Being in Lackawanna Township (now the Borough of Old Forge), County and State aforesaid, bounded and described as follows. Beginning at a birch sapling on St. John's Brook, and running thence forty-one and one-quarter (41¼) degrees west, two hundred and fifty (250) perches to an old hickory corner; thence south forty-six and one-quarter (46¼) degrees west, thirty-one (31) perches to three white oak shrubs; thence south forty-one and one-quarter (41¼) degrees east, two hundred and fifty (250) rods to a beech sapling on aforesaid brook; thence up said brook forty-two (42) perches to the place of beginning. Containing fifty (50) acres of land, and being the same land conveyed to E. A. Coray by Charles Drake and wife by deed dated September 22nd, A. D. 1871, and recorded in Luzerne County in Deed Book No. 152, page 375.

The fifth thereof: Being in Lackawanna Township (now the Borough of Old Forge), County and State aforesaid, bounded and described as follows: Beginning at a corner of Elisha Atherton's lands on the middle road, and running thence south twenty-eight (28) degrees east, two hundred (200) perches and seven-tenths (7-10) of a perch to the Lackawanna River; thence down said river in a southwesterly direction, far enough to make the lot forty-one and eight-tenths (41.8) rods wide, to a corner in the line of lands of Charles Drake; thence north twenty-eight (28) degrees west, two hundred and seventeen (217) perches to a corner on
588 the aforesaid Middle Road; thence along said road north forty-seven (47) degrees east, forty-two (42) perches and sixteen (16) links to the place of beginning. Containing fifty-

three (53) acres and one hundred and twenty-four (124) perches of land. Being the same lands conveyed to E. A. Coray by Abel Bennett et al. by deed dated April 20th, A. D. 1869, and recorded in Luzerne County in Deed Book No. 134, page 373.

The sixth thereof. Lying in Lackawanna Township (now the Borough of Old Forge), County and State aforesaid, and bounded as follows: Beginning at a corner in line of lands of Erastus Smith and running thence north forty-six (46) degrees forty-five (45) minutes east, one hundred and fifty and — tenths (150.0) perches to a corner in a public road; thence by said road north forty (40) degrees west, twenty-seven and one-tenth (27.1) perches to a corner; thence south forty-six (46) degrees forty-five (45) minutes west, fifty-nine and eight-tenths (59.8) perches to a corner; thence north forty (40) degrees west, ninety (90) perches to a corner on Ascension Brook; thence down by the said brook, by the several courses and distances thereof, to a corner in the line of lands of Erastus Smith; thence by lands of the said Smith south forty-two and one-half (42½) degrees east, one hundred and eleven and two-tenths (111.2) perches to a pine corner, the place of beginning. Containing eighty-one (81) acres, ninety-three and six-tenths (93.6) perches of land, strict measure, be the same more or less. Being the same lands conveyed to E. A. Coray by Henry H. Winters and wife, by deed dated September 21st, A. D. 1868, and recorded in Luzerne County in Deed Book No. 130, page 21.

The seventh thereof: Also in Lackawanna Township (now the Borough of Old Forge), County and State aforesaid, bounded
589 and described as follows: Beginning at a post in the line of lands of H. H. Winters and running south twenty-four and three-quarters (24¾) degrees east, one hundred and fifty-six (156) perches to a post in line of lands of Abel Bennett; thence south forty-six and three-fourths (46¾) degrees west, forty-one and six-tenths (41.6) perches to a post; thence north forty-two (42) degrees west, twenty-six and six-tenths (26.6) perches to a public road; thence along said road three-tenths (.3) of a perch to a corner; thence north forty (40) degrees west, twenty-nine and one-half (29½) perches to a corner; thence south sixty-one (61) degrees thirty (30) minutes west, forty and two-tenths (40.2) perches; thence north forty-two (42) degrees west, eighty-one and eight-tenths (81.8) perches to a corner; thence along lands late of H. H. Winters north forty-six and three-quarters (46¾) degrees east, one hundred and twenty-six and six-tenths (126.6) perches to the place of beginning. Containing eighty-two (82) acres, more or less. Being the same lands conveyed to E. A. Coray and wife, by deed dated November 5th, 1869, and recorded in Luzerne County in Deed Book No. 136, page 329.

The said seven pieces containing about eight hundred and ninety-five acres, and being the same property described in the lease, dated March 1st, 1887, from The New York, Susquehanna and Western Coal Company to said parties of the first part, and recorded in Lackawanna County, Pennsylvania, in Deed Book No. 41, page 254, etc.

Excepting and reserving, however, therefrom, the coal, buildings

and surface as mentioned, excepted and reserved to Elliott, McClure & Company in the lease aforesaid.

Also, all the coal in and under three other tracts of land situate in Old Forge Township, in the County of Lackawanna and
590 State of Pennsylvania, and described as follows:

The first thereof: Being all the coal and other minerals lying underneath the surface of and belonging to all that tract in Old Forge Township aforesaid, known as the John Stewart Farm, containing fifty-one (51) acres and nine (9) acres and one hundred and fifty-six (156) perches of surface, described in the deed of John Stewart and wife to The New York, Susquehanna and Western Coal Company, dated the twenty-second of October, A. D. 1889, and recorded in said office in Lackawanna County in Deed Book No. 66, page 208, a lease of which was made to the said parties of the first part by the party of the second part on May 6th, 1890, and duly recorded in Lackawanna County, Pennsylvania, in Deed Book No. 70, on page 565, etc.

The second thereof: Being the coal in two pieces of land described in lease of Lacoe and Shiffer to said parties of the first part, dated the first of April, A. D. 1887, and recorded in Lackawanna County in Deed Book No. 43, page 437.

The third thereof: Being the coal in about eight (8) acres of land, described in lease of Harold McClure to said parties of the first part, dated the ninth day of January, A. D. 1890, and recorded in said Lackawanna County, in Deed Book No. 69, page 38.

Also excepting and reserving such portion of the above described land as is described in a certain bill in equity, brought by Elliott, McClure & Company against John Jermyn, et al., in the Court of Common Pleas of Lackawanna County, to No. 6 June Term, 1893; that is to say excepting and reserving the interest now owned by the grantors herein to said land. But if it should afterward ap-
591 pear and be established that the land so described in the said bill in equity is the land and coal of the grantors herein, then the same shall be construed to be included within this contract.

And whereas it has been decided by the Court above-named that the grantors herein are entitled, by way of exchange for the land described in said bill in equity, to the coal in a tract of land, consisting of seventeen acres, situate on the southeast side of St. John's Brook, which, at the present time, the grantors herein do not lay any claim to; it is agreed, further, that should the coal under the same seventeen acres hereafter become the property of the grantors, then the same shall be included within the terms of this contract, the same as though it were fully described herein; the said seventeen acres being identified and described in the proceeding above mentioned and the decree of the court thereon made.

Excepting and reserving also, from the land hereinabove described, a certain tract of about thirty-six acres of coal, heretofore exchanged to The Delaware, Lackawanna and Western Railroad Company and to be mined by them, the said thirty-six acres being described in a written contract heretofore made and entered into between the said

Jermyn & Company and The Delaware, Lackawanna and Western Railroad Company, dated May first, A. D. 1887.

Shipments to be made from time to time as called for by the Buyer. The Buyer to give, on the twenty-fifth of each month, notice of the quantity as nearly as practicable Buyer will require for next month, and arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit.

The Buyer to use its best efforts to find a market for the Sel-
592 lers' coal so as to enable the Sellers' collieries to be worked as many days as practicable, with due regard to the general market conditions, and to give orders for shipment which will enable the Sellers to work their collieries as many days in each year as other collieries work, similarly situated.

The Buyer agrees that it will not discriminate in favor of its own mines, or any persons, firms or corporations with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the Buyer, measured by the colliery capacity of the respective Sellers. It being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the anthracite coal which the requirements of the market may from time to time demand. The colliery capacity shall be determined as of the first of January in each year by the parties hereto, and, on their failure to agree, the President for the time being of the Girard Trust Company shall select a suitable expert for this purpose. Should any marked change take place affecting the productive capacity of the colliery, either the Buyer or the Sellers may call for a new determination of the colliery capacity as of the beginning of any quarter of the calendar year.

Second. The Buyer agrees to pay and the Sellers agree to accept the following prices for said coal, when prepared in accordance with the standard hereinafter set forth, and delivered f. o. b. railroad cars at the breaker:

For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

For Pea coal, fifty (50) per cent. of the general average
593 f. o. b. price for Pea coal at said tide points at or near New York when the said price is two dollars and fifty cents ($2.50) per ton or less, and for each advance of ten cents per ton in the said f. o. b. price above two dollars and fifty cents ($2.50) the proportion paid the Sellers shall be increased one (1) per cent. until the percentage paid for Pea coal reaches sixty-five (65) per cent.

For Buckwheat coal No. 1, forty (40) per cent. of the general average f. o. b. price at said tide points at or near New York when the said price is two dollars ($2.00) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price, the proportionate price paid the Sellers shall be increased two (2) per cent. until the said f. o. b. price reaches two dollars and fifty cents ($2.50), after which the proportionate price paid the Sellers shall advance one (1)

per cent. for each ten (10) cents advance in the f. o. b. price above two dollars and fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the Buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea coal.

For all sizes smaller than Buckwheat No. 1, the Sellers shall receive twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten cents (10) increase in the general average f. o. b. price above one dollar and thirty cents ($1.30) a ton at tide, the price shall be increased five (5) cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations.

It is also agreed that if at any time, through changes of sizes of meshes and of screens or of conditions of trade, the sizes smaller than Buckwheat No. 1, as described herein, shall be marketable at
594 tide at the same price as Buckwheat No. 1, the scale of prices on a basis of forty (40) per cent., when the general average f. o. b. price at tide is two dollars ($2.00) per ton, or less, shall be substituted for the flat price at mines herein provided for during the continuance of such conditions.

And it is also understood and agreed that the Sellers shall have the right to sell and dispose of on their own account and at such prices as they shall see fit the excess of the sizes of coal smaller than Buckwheat No. 1, when and as often as the Buyer refuses to purchase said excess of smaller sizes in accordance with the option hereinbefore contained.

Third. The general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant satisfactory to both parties, to whom the Buyer shall furnish not later than the 8th of each month a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the Buyer at tide on all sales of each size of coal from the Lackawanna region, and the accountant each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the Buyer and Sellers, by whom they shall be accepted, subject to the right of appeal to the Arbitration Board, in the settlement between Buyer and Sellers. All statistics given such accountant shall be treated by him confidentially, and the resulting averages only shall be given by him to the Buyer and Sellers.

It is understood that when the words f. o. b. price occur herein the actual f. o. b. price received is meant, without any deductions for commissions, demurrage or any other charges.

595 Fourth. It is understood and agreed that the Sellers shall have the right to sell and dispose of, at retail, on their own account, coal for use and consumption of their employees and others in the immediate neighborhood of Sellers' colliery, provided that the coal so sold and disposed of shall not in any event be loaded into railroad cars, but shall be hauled from the Sellers' colliery breaker by wagon.

Fifth. Payments shall be made monthly in cash. A partial payment of at least one dollar ($1.00) per ton shall be made on or before the twelfth (12th) of each month, and the balance on or before the twentieth (20th), for all coal delivered by the Sellers under this contract during the preceding calendar month. Provided, that if default shall be made by the Buyer in any payment aforesaid, the Sellers may, at their option, declare this contract forfeited by giving notice of such default for a period of at least five (5) days, and of their intention to terminate this contract, unless payment shall be made in the meantime; but in case of a like default of payment in the next succeeding month this contract may be peremptorily terminated by the Sellers without such notice.

Sixth. All coal shipped under this contract shall be subject to inspection under the direction of a Chief Inspector to be appointed by the Buyer, whose duty it shall be to see that the said coal, as well as all other coal coming under his jurisdiction, conforms to the following standard, viz.:

First. The coal shall be practically free from dirt as it leaves the lip screen before entering the car.

Second. The coal shall be well sized and made through and over the following square screen meshes, or their equivalent, viz.:

596 Broken, through a mesh 4″ square and over a mesh 2¾″ square.

Egg, through a mesh 2¾″ square and over a mesh 2″ square.

Stove, through a mesh 2″ square and over a mesh 1⅜″ square.

Chestnut, through a mesh 1⅜″ square and over a mesh ¾″ square.

Pea, through a mesh ¾″ square and over a mesh ½″ square.

Buckwheat No. 1, through a mesh ½″ square and over a mesh ¼″ square.

Buckwheat No. 2 or Rice, through a mesh ¼″ square and over a mesh ⅛″ square.

None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal; and it is especially agreed that neither Egg, Stove nor Chestnut coal shall contain more than five (5) per cent. of larger sizes; that Chestnut coal shall not contain more than ten per cent. of Pea and five per cent. of Buckwheat No. 1; nor Pea coal more than fifteen (15) per cent. of Buckwheat No. 1, and five per cent. of Rice; nor Buckwheat No. 1 more than fifteen (15) per cent. of Rice.

Third. The sizes above mentioned shall in no case contain more than the following percentages of refuse (consisting of slate, rock and fire-clay), viz.:

597 Broken, one (1) per cent.; Egg, two (2) per cent.; Stove, four (4) per cent.; Chestnut, an average of not more than five (5) per cent., and at no time to exceed a maximum of seven (7) per cent.; Pea, ten (10) per cent.; Buckwheat, fifteen (15) per cent.

Nor more than the following percentages of bone (containing a proportion of fixed carbon) ranging between forty (40) and sixty-five (65) per cent, viz.:

Broken, two (2) per cent.; Egg, two (2) per cent.; Stove, three (3) per cent.; Chestnut, five (5) per cent.; Pea and Buckwheat coal shall not contain such proportion of said bone as to reduce the price below the average market price of those sizes.

Seventh. If the conditions of the trade shall at any time or times require a higher standard of preparation than as aforesaid, the Sellers shall prepare the coal so as to conform to such higher standard; provided, however, that the Sellers shall be reimbursed for any increased expense involved; and, if the parties hereto shall not agree as to the amount of such reimbursement, the question shall be referred to the arbitration board as hereinafter provided. All coal shall be inspected at the breaker.

Eighth. When the Inspector is making a test for impurities in the coal, he shall, whenever possible, take the sample from the coal as it flows from the chute into the car. If at any time the first test is unsatisfactory to either party, the Inspector shall make two other tests of the coal in question, and the average of the three tests on one car shall be final. If at any time it is necessary to test a car after it leaves the chute, a sample shall be obtained by taking equal quantities of coal from the middle and each side and each end of the car in order to ascertain the average quality of the coal tested in
598 that car. In case the Inspector shall condemn coal which is believed by the Sellers to be up to the standard, the Sellers shall in that case make complaint to the General Superintendent of the Buyer, and if it is found by him to be up to the required standard, the coal shall immediately go forward, and the instructions to the Inspector shall be so modified as to remove as far as practicable cause for similar complaints thereafter by the Sellers. The cost of all inspections shall be equally divided between the parties, except that the Chief Inspector shall be paid by the Buyer.

Ninth. It is understood and agreed that the Sellers will ship to the Buyer all the coal mined and prepared at the said colliery or collieries (with the exception of coal required in the Sellers' mining operations and the coal retailed at the breaker as hereinbefore provided), prepared according to the standard hereinbefore recited, and, in case any coal is condemned and rejected by the Inspector on account of its preparation, the Sellers will re-prepare the same until it conforms to the required standard.

Tenth. A ton of coal under this contract shall consist of twenty-two hundred and forty (2240) pounds, and all coal shipped by the Sellers under this contract shall be weighed either upon scales at mines, tested and approved by the Buyer, or upon the weigh-scales of the railway over which it passes on its way to market, and the amount of coal in each car shall be determined by the certificate of the weighmaster at said scales. An allowance for waste shall be made of such amount as is currently allowed by the railroad company transporting the coal, but not exceeding one (1) per cent.

Eleventh. The Sellers will consign and manifest said coal to such points and parties as the Buyer shall from time to time direct,
599 and will furnish and send to the Buyer and to the consignees named by the Buyer, and to such other parties as the Buyer

may direct, such copies of manifest and such notice relating to coal shipped as the Buyer may direct; and the Sellers will generally do and perform all acts usually and properly attendant on and connected with the mining and shipping of coal from the said colliery.

Twelfth. If, by reason of any strikes among the employees of either party, or by reason of injury to the works, buildings, fixtures, railroad, terminal facilities or other property of the railway company or companies by which the coal is transported to market, or of either party hereto, or of unavoidable delays or obstructions in the mining or transportation of the said coal, either party shall be unable to respectively furnish or take the coal as herein agreed, such party shall not be liable for non-fulfillment of this agreement during the period of such disability; provided every reasonable effort be made to resume operations at the earliest practicable period.

Thirteenth. The percentage of the various sizes of coal to be delivered under this contract shall be the same as the average produced at the several collieries operated by the Buyer in the same region.

Fourteenth. In the event of any disagreement as to the quantity to be ordered, or the actual price of coal at tide, or on any other question to be decided under the terms hereof by arbitration, it shall be determined by a board to be known as Permanent Board of Arbitration, which shall consist of three persons; one person selected by the Sellers, viz.: E. B. Sturges; the President of the Buyer company to be the second person; and the President for the time being of Girard Trust Company to be the third person.

600 The name of the person to represent the Sellers shall be inserted in this agreement, or, if not named before its execution, shall be endorsed in writing on this agreement, and when and as often, by reason of death, resignation or vacancy, or for any cause, another person shall be selected, the name of such person shall likewise be endorsed hereon, which endorsement shall have the like effect as if the name had been originally inserted in this agreement. The Arbitration Board to have full power over costs of reference, and to decide by whom they shall be paid.

Fifteenth. If by reason of changes in trade or colliery conditions the Sellers are unable to operate their mines without financial loss on the basis of this contract, and the Buyer declines to modify this agreement, the Sellers may submit the questions involved to the said Board of Arbitration, and, if the board decides that the Sellers cannot operate their mines without loss on the basis of this contract, and if the Buyer and Sellers cannot agree on a modification of this contract, then this contract shall cease and determine.

Sixteenth. It is also understood and agreed (anything herein contained to the contrary notwithstanding) that if at any time or times the average f. o. b. price at tide for sizes of coal larger than Pea coal shall be less than three dollars and fifty cents ($3.50) per ton, then the Sellers may, at their option, temporarily suspend mining and cease all deliveries hereunder until the said average price shall reach three dollars and fifty cents ($3.50) per ton; provided, however, that two weeks' notice of intention to stop deliveries shall in such case be given by the Sellers to the Buyer; and, if any question arises as to

the price being less than $3.50 it shall be submitted to the permanent Arbitration Board.

Seventeenth. This agreement shall inure to the benefit of
601 and be binding upon the executors, administrators, successors and assigns of the parties hereto respectively.

In witness whereof, the parties of the first part have hereunto set their and each of their hands and seals, and the party of the second part hath caused its corporate seal to be hereunto affixed, attested by the signatures of its duly authorized executive officers, the day and year first above written.

(Signed) JOHN JERMYN. [SEAL.]
(Signed) J. J. JERMYN. [SEAL.]

Signed, sealed and delivered in the presence of
JOHN P. BUTLER.

THE NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY.
By G. M. CUMMING, *President.* [SEAL.]

Attest:

J. A. MIDDLETON, *Secretary.* [SEAL.]

STATE OF PENNSYLVANIA,
County of Lackawanna, ss:

On the twenty-third day of January, A. D. 1901, before me, the subscriber, a Notary Public in and for the Commonwealth of Pennsylvania, personally came the above named John Jermyn and Joseph J. Jermyn and in due form of law acknowledged the foregoing indenture to be their and each of their act and deed, for the uses and purposes therein mentioned, to the end that the same might be recorded as such.

Witness my hand and Notarial seal the day and year last aforesaid.

[SEAL.] JOHN P. BUTLER,
Notary Public.

602 STATE OF NEW YORK,
County of New York, ss:

On the seventh day of June, A. D. 1901, before me, the subscriber, a Notary Public, personally appeared J. A. Middleton, Secretary of the said corporation, The New York, Susquehanna and Western Coal Company, who, being duly sworn, according to law, says that he was personally present at the execution of the above-written indenture and saw the common or corporate seal of the said corporation duly affixed thereto; that the seal so affixed thereto is the common or corporate seal of the said corporation; that the above indenture was duly sealed and delivered by the proper officers of the said corporation, as and for the act and deed of the said corporation, for the uses and purposes therein mentioned, and that the names of this deponent as Secretary, and of G. M. Cumming as President of the said corporation,

subscribed to the said indenture in attestation of its due execution and delivery, are of their and each of their respective handwritings.

J. A. MIDDLETON, *Secretary.*

Sworn to and subscribed before me the day and year last aforesaid. Witness my hand and official seal.

[SEAL.]

A. L. TRAVIS,
Notary Public, Kings County.

Certificate filed in New York County.

603 [*Answer M. F. Dolphin. Filed Jan.* 4, 1908.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING CO. et al., Defendants.

Separate Answer of Michael F. Dolphin, Who Has Been Made One of the Defendants by the Amended Petition Filed in the Above Stated Case.

This Defendant, saving and reserving unto himself all objections and exceptions to the petition herein filed, for or by reason of matters or things that appear on the face thereof, and particularly the objection thereto that said petition shows no violation on the part of this Defendant of any statute of the United States, and does not set forth facts sufficient to show any cause for citing this Defendant to appear in this honorable court, or to give this court jurisdiction as to this Defendant, for answer thereto, or to so much thereof as this Defendant is advised it is material or necessary for him to make answer unto, says:

That he is an utter stranger to all and singular the matters
604 and things alleged and set forth in Plaintiff's petition and the amendment thereto; that this Defendant has not information for the formation of a belief as to any of the matters alleged and set forth in the Plaintiff's petition or the amendment thereto.

This Defendant is not personally in any way engaged in the mining, shipping or preparing anthracite coal for market, and has no contract as an independent operator of the character and nature set forth in clause (*a*) of paragraph 7 of the original petition, and knows nothing whatever of the matters and things, combinations and conspiracies referred to and set forth in the petition in this case. That he is interested as a stockholder in several corporations engaged in mining and shipping anthracite coal, (none of which are joined as Defendants in the petition of Plaintiff, or the amendment thereto)

but as an individual he is not so engaged, all which matters this Defendant is ready to maintain and prove as this court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MICHAEL F. DOLPHIN.

WILLARD, WARREN & KNAPP,
Solicitors for Michael F. Dolphin.

605 *Præcipe for Order for Decree Pro Confesso Against The Llewellyn Mining Company. Filed January* 21, 1908.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA
vs.
THE READING COMPANY et al.

To the Clerk of the Circuit Court:

Enter an order that the bill herein be taken pro confesso as to the Llewellyn Mining Company, a defendant herein, for default of appearance.

J. WHITAKER THOMPSON,
United States Attorney, Solicitor for the Plaintiff.

606 [*Replication. Filed Jan.* 28, 1908.[

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Replication of The United States of America, Plaintiff, to the Separate Answers of Reading Company; Philadelphia and Reading Railway Company, Lehigh Valley Railroad Company, Delaware, Lackawanna and Western Railroad Company, The Central Railroad Company of New Jersey, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The Philadelphia and Reading Coal and Iron Company, The Lehigh Valley Coal Company, The Lehigh and Wilkes-Barre Coal Company, Pennsylvania Coal Company, Hillside Coal and Iron Company, The New York, Susquehanna and Western Coal Company, The Temple Iron Company, The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, The Elk Hill Coal and Iron Company, The St. Clair Coal Company, The Enterprise Coal Company, Pine Hill Coal Company, Buck Run
607 Coal Company, Clear Spring Coal Company, The Price-Pancoast Coal Company, Mount Lookout Coal Company, The Peoples' Coal Company, George F. Lee Coal Company, The North End Coal Company, Melville Coal Company, The Parrish Coal Company, Red Ash Coal Company, The Raub Coal Company, Midvalley Coal Company, The Austin Coal Company, Clarence Coal Company, The Nay Aug Coal Company, The Green Ridge Coal Company, Lackawanna Coal Company, Limited; The Dolph Coal Company, Limited; Richard White and Michael F. Dolphin, and to the Joint and Separate Answers of Mary W. F. Howe, Frank Pardee, and Sarah Drexel Van Rensselaer, Executrix under the Will of John R. Fell, Deceased, Co-partners, Trading as A. Pardee & Company; of Lafayette Lentz, William O. Lentz, and Lewis A. Riley, Co-partners, Trading as Lentz & Company; of John M. Robertson and William Law, Co-partners, Trading as Robertson & Law; and of Joseph J. Jermyn, Surviving Partner, Doing Business under the Firm Name of Jermyn & Company; and Joseph J. Jermyn, George B. Jermyn, and Emma J. Jermyn, Executors under the Will of John Jermyn, Deceased, Defendants.

This replicant, saving and reserving to itself now and at all times hereafter all and all manner of advantage of exception which may be had and taken to the manifold insufficiencies of the said answers, for replication thereunto says that it will aver, maintain, and prove

its petition to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently
608 replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant is and will be ready to aver, maintain, and prove, as this Honorable Court shall direct; and humbly prays, as in and by its said petition it has already prayed.

J. WHITAKER THOMPSON,
United States Attorney for the Eastern District of Pennsylvania.
ALEX. SIMPSON, JR.,
Special Assistant to the Attorney-General.
G. CARROLL TODD,
Special Assistant to the Attorney-General.

609 *Certificate of the Attorney General under Act of 11th February,* 1903.

Filed October 17, 1907.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of April Sessions, 1907.

No. 27. Sitting in Equity.

UNITED STATES OF AMERICA, Plaintiff,
v.
THE READING COMPANY et al., Defendants.

To the Clerk of said Court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the United States against The Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkes-Barre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and is in my opnion a case of general public importance.

I, therfore, request that, agreeably to the provisions of
610 the Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought

under the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' etc.," approved February 11, 1903, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the Circuit Judges of the Third Circuit, to the end that said case shall be given precedence over other cases in said court and be assigned for hearing in its various stages at the earliest practicable date before not less than three of the Circuit Judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

Washington, D. C., October 16, 1907.

611 *Appointment of Examiner.*

Filed January 30, 1908.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of April Sessions, 1907.

No. 27.

UNITED STATES OF AMERICA
v.
THE READING COMPANY et al.

And now, January 30th, 1908, upon motion of Alex. Simpson, Jr., Special Counsel for plaintiffs, it is ordered and decreed that Charles H. Guilbert be and he hereby is appointed examiner in the above case, in accordance with Rule XIII of the Additional Rules in Equity adopted by this Court, for the purpose of taking the testimony therein, either within or without this District, and to report the same to the Court sec. reg.

GEORGE M. DALLAS,
Circuit Judge.

612 *Order of Examiner Setting Time and Place for Beginning Taking of Testimony on Part of Plaintiff.*

Filed April 22, 1908.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

And now, the Court having by order dated January 30, 1908, appointed the undersigned as Examiner to take the testimony in this

cause, it is, on motion of solicitors for the plaintiff and pursuant to the 67th of the Rules of Practice in Equity of the Supreme Court of the United States,

Ordered, that the taking of testimony on the part of the plaintiff be entered upon before said examiner on May 25, 1908, at 12 o'clock, noon, in room No. 324 of the Post Office Building, Philadelphia, Pennsylvania; and that due notice hereof be given to solicitors for the defendants.

Dated April 22nd, 1908.

C. H. GUILBERT, *Examiner.*

613 *Order Fixing Time for Taking Testimony.*

Filed September 16, 1908.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE READING COMPANY et al., Defendants.

And now, the taking of the testimony in this cause on the part of the plaintiff having been duly entered upon on May 25th, 1908, at 12 o'clock, noon, in room 324 of the Post Office Building, Philadelphia, Pennsylvania, and having been thereafter on the same day adjourned until further notice, it is, on motion of solicitors for the plaintiff and pursuant to the 67th of the Rules of Practice in Equity of the Supreme Court of the United States,

Ordered, that the taking of said testimony on the part of the plaintiff be proceeded with before the examiner appointed herein beginning Tuesday, September 29th, 1908, at 11.30 o'clock, A. M., in room No. 324, of the Post Office Building, Philadelphia, Pennsylvania, and that notice hereof be given to solicitors for the defendants.

C. H. GUILBERT, *Examiner.*

Dated September 15th, 1908.

614 [*Defendants' Motion to Suppress Testimony. Filed March 25, 1909.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 127.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE READING COMPANY and Others, Impleaded.

And now come the defendants, the Reading Company, the Philadelphia and Reading Railway Company, The Philadelphia and

Reading Coal and Iron Company, the Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The New York, Susquehanna and Western Coal Company, The Pennsylvania Coal Company, the Hillside Coal and Iron Company, the Temple Iron Company, the Central Railroad Company of New Jersey, The Lehigh and Wilkes-Barre Coal Company, The Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company, and separately, severally and jointly move to strike out of the testimony heretofore taken herein in behalf of the plaintiff, and to suppress therefrom the several statements and exhibits hereinafter specified upon the ground that the same are irrelevant, immaterial and incompetent, and upon the further grounds upon which the same were objected to when offered in evidence as hereinafter
615 specified, objections to the immateriality or irrelevancy of all evidence having been reserved to the defendants by the stipulation of counsel for the plaintiff at the beginning of the hearing hereon as appears by such stipulation upon page 6 of the printed record.

The several statements and exhibits specified to be struck out and suppressed are as follows, to wit:

1. Strike out and suppress all that portion of the testimony of the witness Joseph S. Harris beginning upon page 19 of the printed testimony, and ending upon page 25, which reads as follows, to wit:

"Q. Along in 1886, or a little earlier, the Commonwealth of Pennsylvania instituted a proceeding against certain coal carrying roads and certain coal companies, charging them with being in a combination, did it not?

"A. You have the papers there. I do not remember the dates. Yes.

"Q. You were a witness in that suit?

"A. I was a witness in some of the suits. I do not know particularly what suits they were.

"Q. I have here what purports to be a copy of the testimony taken in this injunction suit between the State of Pennsylvania and certain anthracite carriers in the year 1886, and what purports to be a copy of your testimony given in it. It is an appendix to a report of the congressional committee made in 1889. You were called upon to testify in reference to certain meetings, of which you were the secretary, and which were held, the first one, at the office of the Lehigh Valley Railroad Company, in Philadelphia, at which were present representatives of all the anthracite interests?

"A. Do I say there that I was secretary?

"Q. You signed these minutes. They purport to be set out here signed by you as secretary. I show you what purports to be a copy of your testimony, and ask you to look at it, refresh your
616 recollection with it, and see if the statements that were made in reference to this meeting of December 19th, 1884, held at the office of the Lehigh Valley Railroad Company, in Philadelphia, and a copy of the minutes set out here, are correct?

"A. I should imagine that those were authentic notes. I see no reason to doubt that they are.

"Q. You were asked in the subpœna duces tecum to bring a copy of these minutes along with you today. Are you able to produce them?

"A. No; I looked for them, but I did not find them or any indication of them. I looked for them twice.

"Q. After refreshing your recollection, state to us whether you were present at this meeting referred to in the testimony given in the case to which I have referred, and whether you kept the minutes set out here in this congressional report?

"A. My memory had entirely gone that there was ever a meeting of which there was a chairman and I was secretary. I suppose if I testified at that time that it was so, it was so.

"Q. Have you no recollection of it now?

"A. No; I have not. I do not recall. I did not suppose they were that formal. I do not remember at all. It is twenty-four years ago, and the matter has passed out of my mind altogether. I should have said, in fact, I did say in talking over the matter when this subpœna came, that there never was any meeting of which there was any organization. That was my recollection. I have no doubt that the documents from which I spoke were very much fresher in my mind then than they are now and I have no doubt my testimony there is correct. I never looked over the testimony as printed. I never have seen it.

"Q. I show you this entire testimony set out in this appendix to the report made by the committee of the House of Representatives to investigate labor troubles in Pennsylvania, of which Mr. Tillman was chairman, and which was made in February, 1889, and ask you to examine it and see whether or not you have any reason to doubt that it is authentic and that the statements made therein are correct?

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"A. I do not remember that I ever appeared before a committee.

"Q. This is your testimony given in a case brought by the State of Pennsylvania against certain coal-carrying roads, wherein you said a while ago you remembered you testified. This purports to be a copy of your testimony given in that case. Not before the congressional committee.

"A. How can I testify as to its correctness?

"Q. You can examine it and tell us whether you think it is right or wrong.

"A. My memory will not serve me twenty-four years as to the details of this. The people who published it, it seems to me, would be the people to authorize it and say where they got it. I do not remember anything about it.

"Q. You do not remember about it?

"A. I do not remember about it, no. I do not see anything here that may not be so, but I could not swear it was so at all. I do not know anything about it. I never saw this document, and do not really know anything about it.

"Q. Do you remember being present at a meeting at any time

in the year 1884, or thereabouts, when there were present representatives of what are called the anthracite interests, and Mr. Sloan was in the chair, and you were secretary, and at which meeting the chairman explained the object to be the devising of the best means of carrying on the business of producing and marketing anthracite for the year 1885?

"A. I think it very likely I was. When I say I do not remember it, I simply do not remember it.

"Q. There were such meetings, whether you were present or not, of which you had knowledge?

618 "A. There were such meetings; yes.

"Q. The purpose of those meetings was to determine what was the best plan to be pursued by all the coal interests?

"A. I suppose so.

"(Objected to by Judge Campbell.)

"Q. There were such meetings held at different periods during the years 1884, 1885 and 1886, were there not?

"A. That I do not know. I do not know how long they lasted.

"Q. What was the purpose of those meetings?

"A. Is it not stated in the report you have read from?

"Q. Yes, it is stated here.

"A. If you will read it I will state whether it agrees with my recollection.

"Q. The first meeting passed this resolution. (Reading.) 'It is the judgment of this meeting that for the future the total output of anthracite coal required or taken by the market shall be divided among all interested in proper monthly or yearly quotas.

" 'Resolved that a committee of three be appointed by the chair to prepare and present at an adjourned meeting a plan for such distribution, with the proper quotas to be allowed to each interest.

" 'Resolved that each interest be requested to prepare and submit to said committee its claim for quotas, with such other suggestions as it may desire to present for the consideration of the committee.

" 'Chairman nominated and meeting elected the following committee in pursuance of the second resolution: F. B. Gowen, G. M. Hoyt, and J. S. Harris.'

"Q. Do you remember serving on a committee of that sort?

"A. No; I do not.

"Q. That does not refresh your recollection about it at all?

619 "A. No; it does not. It does not make my recollection at all clear. I do not remember that I ever served with those gentlemen. I do not remember what I did.

"Q. Do you recollect whether you and those gentlemen formed a report and gave that report to a subsequent committee, in which you prescribed what percentages of the coal output should be given to the various interests?

"A. I do not remember it at all. I do not remember ever dealing with those questions with Mr. Gowen or Mr. Hoyt. My memory is an entire blank about it.

"Q. Do you not recollect that you reported that the Philadelphia

and Reading Railroad Company should have a certain per cent., and the Lehigh Valley Railroad Company a certain per cent.?

"A. No; if it is there, and if I have testified to it, it is probably true, but I do not remember it.

"Q. You do not recollect anything about these meetings whatsoever, or about these minutes?

"A. No; I do not remember anything about these meetings, except I remember that there were meetings, but as for the details of them, I do not remember at all.

"Q. What was the purpose of those meetings you do remember during the years 1884, 1885 and 1886?

"A. It has been stated by the chairman there, to consider the interests of the coal producers.

"Q. You do remember, then, that there were meetings?

"A. I do remember that there were meetings.

"Q. And those meetings were composed of representatives of the various coal interests?

"A. Yes, sir.

"Q. And they came together for the purpose of determining how much coal should be produced by each?

"A. That is evident from what is stated there. Perhaps
620 it would be proper to testify here, that while there was a general understanding as to the percentages to be produced by each, those percentages never were lived up to.

"Q. State whether or not there were meetings at various times during the years 1884, 1885 and 1886, where there were representatives of the various coal interests, for the purpose of determining how much percentage of the total output should be allotted to each interest?

"A. I should agree with that, except that I do not remember the years. They were about that time, but I do not remember what years.

"Q. As the result of those deliberations was there a general understanding that each interest should produce a certain amount of tonnage?

"A. Yes.

"Q. How long did that continue to be observed?

"A. It never was observed at all.

"Q. I do not mean how long was it continued to be observed accurately, but generally; how long did that understanding exist, and was it expected these interests would live up to it?

"A. It was not observed at all, as I say; people did as they pleased.

"Q. What was the object of meeting year after year if nobody observed anything?

"A. That I do not know.

"Q. You just met and fired this gun off and retired?

"A. That was so; yes.

"Q. You continued to meet each year and fire it off?

"A. Yes; and no doubt remonstrated with those who had exceeded their quotas.

"Q. There was a purpose to try to induce each one of these interests to live up to this agreement?

"A. Yes, sir.

"Q. How long did that thing continue?

621 "A. I do not know.

"Q. Did it not continue as long as you remained president of the Philadelphia and Reading Railway Company?

"A. I do not think it did.

"Q. When do you think it was abrogated?

"A. I do not really know if it ever was abrogated. It fell to pieces itself, but I do not remember the details at all. I do not think there were meetings in the latter part. I do not remember any meetings at all during my presidency. That is as far as I would say about it. I would not say that there were or were not. I say I do not remember them.

"Q. What were the names of the various interests that were represented in this understanding that you gentlemen reached at these meetings?

"A. They are there. I could not remember them without reading them over.

"Q. Let us see if this is correct: The Philadelphia and Reading Company, Lehigh Valley Railroad Company; Delaware, Lackawanna and Western Railroad Company, Delaware and Hudson Canal Company, Pennsylvania Railroad Company, Pennsylvania Coal Company, and New York, Lake Erie and Western?

"A. Yes; I should say so.

"Q. Those were the great mining interests at that time in the anthracite business?

"A. Yes.

"Q. The purpose of those meetings was to get together and compare notes and to see what was to the best interest of all, and to secure co-operation, if possible?

"A. Yes.

"Mr. Reynolds proposed to read from minutes.

"Judge CAMPBELL: I object to all reference to what is contained in the supposed minutes, either by embodiment in questions by counsel or otherwise, as not only immaterial under the gen-

622 eral objection noted at the beginning of this record, but it is also incompetent. The verity of the document quoted from is not shown in any way.

"By Mr. MCREYNOLDS:

"Q. At these meetings about which you have spoken there was a general understanding of the percentages which were to be allotted to each interest, was there not?

"A. Yes.

"Q. I read you: 'As the result of the conference, there was allotted to the Philadelphia and Reading interests, including those of the Schuylkill producers, the Lehigh and Wilkes-Barre, and Lehigh Coal and Navigation Company, 38.85 per cent.; the Lehigh Valley interests, including those of the Lehigh producers, 19.6 per cent.;

for the Delaware, Lackawanna and Western interests, including those of the New York, Susquehanna and Western, 16.05 per cent.; the Delaware and Hudson interests, 11 per cent.; for the Pennsylvania Railroad interests, 8 per cent.; for the Pennsylvania Coal Company's interests, 5 per cent.; for the New York, Lake Erie and Western interests, 1.5 per cent.' You can not recollect the amounts of these particular percentages, but have you any reason to doubt that those were the percentages agreed upon?

"A. No.

"Q. During the time you were the president of the Philadelphia and Reading Railway Company was it your endeavor to produce about the per cent. agreed upon at these conferences?

"Q. You sought from month to month to see that your percentages kept up to that level?

"A. Yes, sir.

"Q. Was it your observation, speaking generally, with now and then an exception, the other interests involved did the same thing with reference to their percentages?

623 "A. No; it was not. There used always to be a difficulty because certain interests produced, quite regardless of those percentages. They did not vary very much. The mining and shipping of coal, coal being a thing that is difficult to store, was very largely dependent upon what they could sell, and after they sold what they could and stored what they could, they had to stop. It was that really that governed them so far as I ever saw.

"Q. Were you present by the invitation of J. Pierpont Morgan at his house, No. 219 Madison Avenue, in New York City, in March, 1886, when there was a conference called in reference to the anthracite coal interests, and Mr. John King, Jr., was made chairman of the meeting, and Mr. J. S. Harris appointed secretary?

"A. I do not remember it.

"Q. You do not remember being there at all?

"A. No; I did not know that I ever was at such a meeting at Mr. Morgan's house.

"Q. Do you not recollect that at this time, in 1886, and at that meeting, that after a general discussion of all the interests involved 'That it was unanimously resolved that the representatives of the anthracite interests agree upon a pool of the anthracite to be mined between March 31st, 1886, and March 31st, 1887, the output for the year first named, for the purposes of this agreement, to be estimated at thirty-three and a half million tons; the percentage of each interest is to be determined hereafter, and that any party shipping over its percentage shall account to the pool for the amount by which it may be found on the 31st of March, 1887, to have exceeded its percentage, at the rate of fifty cents per ton?'

"A. I do not remember that any such thing was ever done. It never was followed up. Nobody ever paid any attention to it, and nobody was ever asked to pay anything, and nobody ever did pay anything.

624 "Q. You do not recollect being at a meeting when that resolution was passed?

"A. No; I do not.

"Q. Do you not remember at that same meeting it was resolved unanimously that the price of coal should be immediately advanced twenty-five cents per ton f. o. b. New York?

"A. My recollection is entirely gone about those meetings. I do not remember anything about them.

"Q. If, however, you testified in reference to that matter, and introduced those minutes in this proceeding by the State of Pennsylvania against certain coal roads, you knew it then, and it was correct?

"Judge Campbell objected to injecting matter into the record in this form.

"Q. You do recall you told me you testified in that proceeding?

"A. Yes, sir.

"Q. Of course, what you said at that time was true, within your knowledge?

"A. Yes, sir.

"Q. Were you acquainted with the fact that in 1883 The Philadelphia and Reading Railroad Company leased the Central Railroad Company of New Jersey and the Lehigh Valley Railroad?

"A. No.

"Q. Were you aware of the fact that they leased the Central Railroad Company of New Jersey at that time?

"A. I do not remember the date.

"Q. About that time they did undertake to lease the Central Railroad Company of New Jersey, did they not?

"A. Somewhere about that time; yes, sir.

"Q. How long did that lease continue?

"A. A year or two, I should think.

"Q. Why was it terminated?

"A. Because the Reading Railroad did not pay its charges, I suppose. I had no official relation with the Reading Railroad at
625 that time. I had with the Jersey Central.

"Q. By that lease did the Reading Railroad acquire control over the coal interests of the New Jersey Central road, as well as the road itself?

"A. I do not know whether it did or not.

"Q. Who was the president of the Philadelphia and Reading Railroad Company in 1883?

"A. I do not know. I do not know whether that was Mr. Gowen's time or Mr. Corbin's. These are matters about which I have never refreshed my memory.

"Q. Mr. Gowen seems to have been the president of the railroad at that time?

"A. Yes; very likely he was."

2. Strike out and suppress Exhibit No. 145, appearing on pages 239 to 298, being the alleged testimony of the said Joseph S. Harris given in a suit wherein the Commonwealth of Pennsylvania was plaintiff, and the Lykens Valley Coal Company and others were defendants, December 31, 1886, such alleged testimony having been

given in a case wherein the parties were not the same, the issues were not the same, and the same being irrelevant, immaterial and incompetent in this case, and not verified as to correctness or facts by the testimony of said witness Harris in this case, as appears by his evidence upon pages 259 and 260 of the testimony.

3. Strike out and suppress those portions of the testimony of the witness Joseph S. Harris concerning the so-called sixty-five per cent. contracts upon the grounds specified by counsel to such testimony at the time it was given, appearing upon pages 29, 30 and 31 of the printed testimony, as follows, to wit:—

"Q. Tell us what you know about the origin of what are called the percentage contracts under which The Philadelphia and Reading Coal and Iron Company purchases coal from various producers.

626 "Judge CAMPBELL: In support of a motion to the court, to be made on the filing and publication of the report of the Examiner, to strike out and suppress incompetent, immaterial and irrelevant testimony, the defendants, the Reading Company, the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railway Company, severally object to the introduction of all testimony or evidence relating to the purchase and sale of anthracite coal produced or to be produced and to be delivered in Pennsylvania, because—

"First. It appears on the face of the petition that the said contracts of purchase and the subject-matter thereof severally are confined to the sale and delivery in Pennsylvania of anthracite coal produced or to be produced within the State of Pennsylvania, without regard to the ultimate markets to which the same were to be consigned or sold by the purchasers, and that they were and are wholly local and domestic contracts, to which the Act of July 2d, 1890, is inapplicable.

"Second. The subsequent sale and consignment, after the completion of the delivery under the purchase contract, of a portion of the purchased coal in the interstate commerce, is immaterial and irrelevant to the issues well and properly raised by this suit.

"Third. It is not the immediate and direct effect of these contracts to affect interstate or foreign commerce in any way. The subsequent introduction of portions or parts of it in interstate or foreign commerce is wholly incidental, and, therefore, immaterial and irrelevant.

"Fourth. All evidence bearing upon the contracts and ultimate sale and distribution of the product is immaterial and irrelevant without proof of the alleged combination in restraint of interstate or foreign commerce or trade.

"I should like to have the stipulation of the counsel for the Government to the effect that this objection may be considered
627 as interposed to all testimony offered in connection with the so-called sixty-five per cent. or other percentage contracts.

"Mr. REYNOLDS: It is so understood.

"A. I do not know that I know anything about the origin of them. I think the first of them were made—I am speaking without accu-

rate knowledge now—I think the first of them were made before I became president. The questions that came up were not debated before me. I think they were in the previous administrations.

"Q. Had you nothing to do with them?

"A. No. I had nothing to do with them, except I assented to such as were made from time to time. I had nothing to do with the original contracts at all. As I recollect, the Lehigh Navigation Company never made any with any railroad company. I do not think that I had any hand in the making of the contracts. I think it was done in Mr. McLeod's or Mr. Corbin's time. I do not know when it began.

"Q. While you were president of The Lehigh Coal and Navigation Company that Company made no such contracts with any railroad company?

"A. No, sir. It has none to-day, and never had any.

"Q. While you were president of the Philadelphia and Reading Railway Company were what are called percentage contracts made from time to time with various producers along the line?

"A. I have no doubt there were some made. I think the most of them were made before I became president.

* * * * * * *

"Q. Were you acquainted with the general outline of these percentage contracts?

"A. Yes, sir.

"Q. Prior to the year 1900 were those contracts made for a specified number of years during which they were to run?

628 "(Objected to by Judge Campbell, as the contracts speak for themselves.)

"Mr. WARREN: I object, so far as it may be regarded as applicable to any of the clients I represent here, as being not only incompetent and improper to elicit information with reference to writings in any such way as this, but as well immaterial.

"By Mr. MCREYNOLDS:

"Q. What I want to know is whether the general policy of the coal and iron company while you were its president was to make those contracts for a definite period?

"A. I suppose it was.

"Q. Why was the change of policy made upon the part of the Philadelphia and Reading Coal and Iron Company in 1900, so that these contracts were made to cover the life of the mine?

"A. I do not remember that such change was made at all at the date you name.

"Q. Do you not know that the existing contracts between the Philadelphia and Reading Coal and Iron Company and the various outside producers contemplate purchases of the output during the entire life of the mine on a sixty-five per cent. basis?

"A. No; I do not.

"Q. You are not acquainted with those contracts?

"A. No. I suppose, not being acquainted with them, it is hardly proper that I should say anything about them. I really do not know that it is so."

4. Strike out and suppress those portions of the testimony of the witness William W. Ruley as immaterial, irrelevant and incompetent, which appear upon pages 105, 106, 107, 108 and 109, as follows, to wit:—

"Q. I understand you to say that this publication, the 'Coal Trade Annual,' is regarded as an authoritative publication?

"A. Yes.

629 "Q. And many figures and statements contained in this publication are derived from you?

"A. Yes.

"Q. And others from an authentic source?

"A. Yes.

"Q. Some things were read from the report of 1896, and you stated that they were the things you had in mind at the time. I read you from the report of 1896, on page 26: 'The individual interest represents considerable tonnage; it is claimed to be something very nearly 17,000,000 annually. A large portion of this coal, particularly that mined in the Lehigh and Wyoming Districts, is sold to the carrying companies on the basis of sixty per cent. of the tidewater selling price net at the mines. Others of the individuals, while they sell the coal themselves, are subject only to a transportation rate equal to forty per cent. of the tidewater price. There is an association of these operators known as the "Anthracite Coal Operators' Association," which has been organized to look after the interests of the individual producer of anthracite. Under the low prices ruling last year the net result to the individual who had not the opportunity to make a profit out of transportation was but a poor one, and during the very low prices of the Summer many of them shut down for the time being.' Was that part of the information you had at the time? I am reading from the annual trade publication in 1896.

"A. I have no doubt I had that information at the time, or saw it at the time.

"Q. That was true, was it, as you now understand?

"A. I judge that was probably correct, or near correct.

"Q. How much coal is now being produced by what were designated here as the 'individual interests?'

"A. I testified here that I thought it was about twenty-five per cent.

630 "Q. What per cent. was that of the total in 1896?

"A. It must have been about thirty-five per cent. of the total at that time.

"Q. The percentage of the individual interest has materially decreased since 1896?

"A. Yes.

"Q. For a long time prior to 1901 these percentage contracts were based upon sixty per cent., were they not?

"A. I had nothing to do with that.

"Q. And that was changed to sixty-five per cent. basis in 1901, was it not?

"Mr. SCHAPERKOTTER: I object. The witness stated he has nothing to do with that, he knows nothing about it, and I enter my objection fully to the whole testimony in regard to the sixty-five per cent. contracts, as far as the information is obtained from the witness, who knows nothing at all about it.

"Q. I read you further from this coal-trade journal for 1896, on page 24, as follows: 'The report of the Philadelphia and Reading Coal and Iron Company says on the same topic: "The company's coal business resulted in a loss of $699,809.21, being 8.1 cents per ton of coal mined, whereas the business of 1894 showed a profit of $268,552.89, or 3.3 cents per ton; so that the result for 1895 was 11.4 cents per ton worse than in the previous year. The comparative loss was caused by the low prices realized for coal, which, with the exception of the year 1886, were less than those of any previous year since 1879. While the business was a losing one for the coal and iron company, this loss was more than made up by the gain to the railroad company from the additional tonnage produced, which was carried at freight rates which yielded a profit.'" Was that part of the information which you had?

"Mr. SCHAPERKOTTER: I object to Mr. Ruley making any answer at all in reply to that question.

"A. I judge I knew all that information at the time.

631 "Q. I will read you further from this same report of the coal trade for 1896 from which Judge Moot has been reading, at the bottom of page 24: 'The sales agents decided to restore the circular price at Buffalo and Chicago, which had been cut somewhat. These prices are: Buffalo (gross tons) four dollars and fifteen cents for broken and four dollars and forty cents for other sizes; Chicago (net tons), five dollars and twenty-five cents for broken and five dollars and fifty cents for other sizes. Chicago prices apply also to business from Lake Michigan and Lake Superior ports.' Is that part of the information you had at this time?

"A. I had that in my files.

"Q. What did you understand when it said: 'The sales agents decided to restore the circular prices?'

"A. If I recall it properly, any statement of that kind made at the time, about the restoration of prices, made me smile.

"Q. Why did you smile when you read about the sales agents?

"A. Because of the condition of the prices themselves. Of course, I did not know anything about what the sales agents did. What I had was that report.

"By Mr. SCHAPERKOTTER:

"Q. You really do not know anything about it?

"By Mr. MCREYNOLDS:

"Q. What did you understand was the meaning of sales agents in that connection?

"By Mr. SCHAPERKOTTER:

"Q. You really do not know anything about it?

"A. No; I never attended a meeting, and of my own information I do not know that a meeting was ever held.

"By Mr. MCREYNOLDS:

"Q. What was your understanding of what was meant by the term 'sales agents' in the quotation I have just read you from this coal-trade journal?

632 "A. I do not know. That is a long time ago to ask me my understanding, what it was at that time, as to some statement which I saw and which I really knew nothing about. I never attended a meeting of the sales agents, and I do not know where they were held or anything about them.

"Q. You understood they were being held and were fixing prices, did you not?

"Mr. SCHAPERKOTTER: That is objected to. You must rely upon your own absolute knowledge.

"Mr. MOOT: I object on the ground that I did not ask the witness what he understood. I asked him for his recollection as to the information which he had, and I object on the ground that what the witness understood is no proof of any fact.

"By Mr. MCREYNOLDS:

"Q. It was a part of your information at this time that these sales agents were holding meetings, was it not?

"A. I saw the statement made. I had no positive knowledge of any kind that they were being held, in fact, I might add that I was not interested in any way at all at that time with the prices, as far as that is concerned. It was a question of tonnage.

"Q. There was pretty fierce competition going on about 1895 and 1896 between the various producers of anthracite coal, was there not?

"A. My recollection is that 1895 was a year of very large production compared with the other years at that time, and I assume that there was considerable competition in the sale of coal.

"Q. Don't you know, there was?

"A. As far as I know, there always has been.

"Q. I read you from the same coal-trade journal for the year 1907, on page 39, as follows: 'In addition to the individual operators selling coal under contract to the railroads, there are twenty-two who do not sell direct to the railroads, and these control a tonnage of about two million five hundred thousand tons, and

633 there are also a few who sell coal locally direct to consumers, and the tonnage of these amounts to upwards of one hundred thousand tons.' Is that part of the information you have on this situation?

"A. That does not sound to me like it was correct. I do not know.

"By Mr. SCHAPERKOTTER:

"Q. As a matter of fact you do not know?

"A. No; I have never verified these figures.

"By Mr. McREYNOLDS:

"Q. I understand you to say that the information published in this coal-trade journal is generally regarded as accurate?

"Mr. SCHAPERKOTTER: That is objected to.

"Mr. WARREN: I also object to that portion as incompetent and absurd.

Q. I read you from the coal-trade journal of 1907, page 39: 'In addition to the operators who sell to the railroad companies and to those who sell direct there are a considerable number who sell through their recognized agents. The operations of the independent anthracite operators, particularly those who sell their product direct to dealers or consumers, not sending their coal to any agency or middle house or disposing of it to the large companies, have frequently been a source of interested attention on the part of the trade. The number of these independent shippers has gradually become smaller in the last few years. Aside from a few conspicuously large concerns among the "individuals" the tonnage sold direct is quite small, and we think it will be well to bear in mind this fact, when, as sometimes happens, the individual producers indulge in an unwonted degree of activity. By the most liberal interpretation only about two million five hundred thousand tons are at command of the independents shipping direct, and considerably more than half of this tonnage is in control of four or five shippers. With
634 few exceptions, the direct selling anthracite operators are now a decidedly small factor.' Is what I have just read a part of the information which you had during the time you were compiling these statistics as the head of the anthracite bureau?

"Mr. WARREN: That is objected to, as there is no proof as to who compiled this, and it is improper under any rules of equity pleading or evidence to undertake to read it and call it a question. The witness not having said that he ever compiled this that now has been read to him by counsel, the question is manifestly improper and incompetent, at any rate, so far as binding my client is concerned.

"Mr. MOOT: I object to this line of examination on the ground that it is not a competent re-direct examination. I asked the witness to identify certain statistics; I asked him with reference to whether certain things I read to him were the information he had in mind in testifying in answer to counsel's questions the other day, and these two classes of testimony covered all I asked him, except generally as to what this journal was in which these things were that I called the witness's attention to. Counsel is now examining the witness along the line of what he understands to be the information he had, without disclosing the source and whether it is competent or incompetent, and I object to it as improper as well as incompetent.

"Judge CAMPBELL: I join in making the general objection as to the irrelevancy and incompetency of this class of testimony.

"Mr. SCHAPERKOTTER: I also object to it."

5. Strike out and suppress all those portions of the testimony of

the witness John B. Kerr which appear in the printed testimony at pages 169 to 172, as follows, to wit:

"Q. Have you recollection of the facts concerning a projected independent railway in the year 1898 from the Wyoming
635 region, in the anthracite coal district, to tidewater, and the acquisition of the Simpson & Watkins Collieries by the Temple Iron Company in 1889?

"Mr. WARREN: Counsel for the Temple Iron Company objects to this question as in form incompetent, and the evidence as incompetent.

"A. I recollect that there was a company organized, and in fact it was announced that the company was organized to build a road.

"Q. Where was that road to extend from?

"Mr. WARREN: That is objected to, unless counsel for the Government shall, by inquiry other than the present question, show some knowledge on the part of the witness other than that it was a rumor, the same being incompetent.

"A. I have no knowledge of it except the announcement in various ways that a company had been organized to build from some point in the Wyoming region to some point on the division line between Pennsylvania and New Jersey.

"Judge CAMPBELL: I give notice of a motion to strike out that testimony.

"Q. You say you knew in 1898 that it was announced that such a road was projected. Who were the parties understood to be behind that road?

"Mr. WARREN: That is objected to as calling for hearsay, and as not competent evidence, the witness having stated that he had no knowledge of his own of the facts which the Government's counsel are now undertaking to get from him by incompetent methods.

"A. The parties whose names I heard mentioned in connection with it were Simpson & Watkins, E. L. Fuller, E. B. Sturgis, I think one of the Jermyns, I think M. S. Kemmerer, and I do not recall any other names.

"Q. Were Simpson & Watkins at that time large producers of anthracite coal in the Wyoming region?

636 "A. They owned three or four collieries—they managed three or four companies that produced anthracite coal.

"Q. Were they not among the largest, if not the largest, independent producers of anthracite coal in that region?

"A. Yes; I think they were.

"Q. Were the other parties which you have mentioned also producers of anthracite coal?

"A. To some extent.

"Q. What became of the collieries which were controlled and operated by Simpson & Watkins in the year 1898?

"Mr. WARREN: That is objected to until the witness has shown

he has some knowledge of what became of them, and I submit it is improper and incompetent to gather hearsay testimony from a gentleman who has no association in business or otherwise with Simpson & Watkins or the proposed road which he has referred to, and I give notice that I shall move to strike this out because I respectfully submit to the court it is outside of the legitimate inquiry.

"A. I only know of my own knowledge of one. That was the Northwest Colliery, the stock of which was purchased by the Temple Iron Company.

"Q. Had you information at that time that the Temple Iron Company also acquired the other collieries operated by Simpson & Watkins?

"A. I had no direct information.

"Q. Is that your understanding?

"Mr. WARREN: That is objected to.

"A. I heard so.

"Q. Is the New York, Ontario and Western Railway Company interested in the traffic of any collieries operated by Simpson & Watkins?

"A. The Northwest.

"Q. How was it interested?

"A. We built a branch to the colliery and a portion of the
637 product was shipped over that branch to our main line, and also over the main line.

"Q. After the colliery was acquired by the Temple Iron Company was any effort made to divert the traffic from the New York, Ontario and Western Railway Company?

"A. There was at first, but subsequently the shipments were resumed, and have been continued ever since.

"Q. To what road was it diverted first?

"A. There were only two roads in it, one the Erie and the other was the Ontario and Western.

"Q. The Ontario and Western road had some sort of an agreement with the colliery for the transportation of its coal?

"A. Yes.

"Q. And in violation of that agreement the coal was diverted to the Erie road?

"A. That is our claim.

"Did the New York, Ontario and Western file a suit against the operator of the colliery to prevent that diversion?

"A. I believe we did; yes.

"Q. I have a certified copy of the bill of complaint in that suit in which it appears that John B. Kerr, vice-president of the New York, Ontario and Western Railway Company, swore to the bill. Were you the Mr. Kerr?

"A. I presume so. There is no other Kerr.

"Q. And when you did swear to that bill were you acquainted with the facts set out in it?

"A. I presume I was. I do not know. That is, such as were set out of my own knowledge.

"Q. I read you from the certified copy of the bill in that case, as follows: 'That during the year 1898 the said Simpson & Watkins, together with other persons engaged in mining anthracite coal, organized a corporation under the laws of Pennsylvania with the avowed purpose of constructing a railroad over which they
638 would transport coal, the product of their mines, thereby, so far as they might be able to do so, taking the tonnage from other railroads then existing; that the subject was agitated in newspapers and otherwise, and was carried along to the extent that surveys of the projected road were made, contracts for rails entered into, and some rights of way purchased, as your orator is informed and believes. That during the Winter of 1899 the plaintiff was requested to join certain other railroad corporations engaged in the transportation of anthracite coal, namely, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Central Railroad of New Jersey, the Delaware, Lackawanna, and Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company (whose railroads, with that of the plaintiff, embrace all the railroads leading from the anthracite coal fields to tidewater, with the exception of that of the Pennsylvania Railroad Company), in a plan to buy up certain collieries owned by so-called "individual operators," and in that way not only control a larger percentage of the coal mined, but defeat the construction of any new line; but the plaintiff declined to enter into any such combination. The other companies named proceeded, and having secured control of an existing corporation, called the "Temple Iron Company," through that company bought up all the capital stock of all the mining corporations in the anthracite region in which the said Simpson & Watkins were interested, including all the capital stock of the Northwest Coal Company, the defendant. As plaintiff is informed and believes, the organization of the various companies was preserved, and in the Northwest Coal Company, Thomas H. Watkins, who had been before such purchase of said stock, treasurer and manager of the de-
defendant, was made president of the said Temple Iron Com-
639 pany and of defendant company and manager of the operations of both companies.' Does the quotation which I have read to you from this bill state the facts as you understood them then and now as to the matter about which I have inquired?

"Mr. WARREN: I object to this method of introducing evidence as incompetent and improper. There is no authentication of the document, and if it is to be established in that way it must be offered as a substantive piece of evidence; and it is not proper for counsel for the Government to read a document with which the witness is associated in the record as part of his evidence, and I move to strike it out.

"A. If you read correctly from the record—it is alleged in the complaint.

"Q. I ask whether that is your understanding of it or not?

"Mr. WARREN: The understanding of the witness is immaterial.

The question here is what were the facts, not what he or anybody else may have understood or alleged them to be, on information and belief, in adverse litigation against some one, and the further fact that it is a recital of a part of the pleadings in a controversy there instituted or about to be instituted, and it is certainly not competent evidence in this case.

"Q. Here is the document. Read it yourself, and say whether that quotation is correct.

"A. I have just read it. Those were the complaints or inferences which we drew from the facts alleged which came to our knowledge."

6. Strike out and suppress all those portions of the testimony of the witness Archibald F. Law appearing upon pages 331 and 332 of printed testimony, which read as follows, to wit:

"Q. When was this New York, Wyoming and Western matter projected? In 1898, was it not?

640 "A. I think so. About that time.

"Q. Do you know why Simpson & Watkins were desirous to have that road built?

"A. I do not know, only from hearsay.

"Q. Tell us what you know about it.

"(Objected to by Major Warren as this is asking the witness to tell of the mental operations of others, and is hearsay.)

"A. From hearsay, I understood it was in order to get to tide water over other routes than the ones they were shipping in order to get better rates, or better accommodations, or something of that kind. That was the general understanding of the matter in Scranton.

"Q. The purpose of the road was to give these people better freight rates to tide water?

"(Major Warren objected to the statement of counsel in the form of a question as being a conclusion and incompetent.)

"A. It was so understood."

7. Strike out and suppress all those portions of the testimony of the witness William R. Taylor appearing in the printed testimony at pages 341 to 343, as follows, to wit:

"Q. At the request of counsel for the Government, you have produced an instrument in writing, dated February 18th, 1876, signed by Thomas Dickson for the Delaware and Hudson Canal Company interest, by John Taylor Johnston for the Central Railroad of New Jersey interest, by A. Pardee for the Lehigh Valley Railroad interest, by Samuel Sloan for the Delaware, Lackawanna and Western Railroad Company, by George A. Hoyt for the Pennsylvania Coal Company, and by Franklin B. Gowen for the Philadelphia and Reading Railroad Company interest. Will you state the general character of that instrument?

641 "By Judge CAMPBELL:

"Q. I observe from the marks on these documents that they are not record papers filed amongst the archives of the Philadelphia and Reading Railroad Company, as is usual.

"A. No, sir.

"Q. You were the stenographer to the president, Mr. Franklin B. Gowen, at the date of these documents?

"A. Yes, sir.

"Q. You were at that time the custodian practically of the private papers of the president, and continued to be so later on, and even after you became the secretary of the company you still retained the personal possession of things just as you had been previously doing for these executive officers?

"A. Yes, sir.

"Judge CAMPBELL: I object to the introduction of any testimony regarding the documents in question, for the reason that they appear on their face to be utterly immaterial and irrelevant, as well as incompetent. Also the document shows on its face to have been a common understanding among the parties named, to exist only for and during the year 1876. The document is wholly *res inter alios acta,* and can have no bearing or effect upon the parties to this controversy in this suit. Finally because the present question calls for the witness's characterization of the document, which should show and speak for itself, and its interpretation and characterization remains for the court, and not for this witness.

"Judge MOOT: I object on behalf of all parties in this suit who do not appear in any way to be parties to this plan which the witness is asked to characterize, and which is offered in evidence, and my objection is that nothing of the kind is alleged in the petition; that it precedes the date even of the legislation under which the Government brings its suit, and that it is wholly incompetent
642 and improper as to the other parties to this suit, and, in particular, to the Erie Railroad Company, as an illustration.

"Mr. TODD: Now answer the question.

"(Question read to the witness.)

"A. The paper is described as a plan for the government of the anthracite coal trade to competitive points for the year 1876.

"Q. How did that instrument come into your possession?

"—. As stenographer for Mr. Franklin B. Gowen, who was then president of the company, I presume, it was given to me to file among the other papers in the president's office. It has remained continuously in my possession since that time, with the exception of a period from, I think, the first of April, 1885, to the middle of January, 1886, when I was not connected with the company.

"Q. It came into your possession again after 1886, when you resumed your connection with the company?

"A. When I became secretary.

"Q. It came into your possession as secretary of the Philadelphia and Reading Railroad Company?

"A. When I became secretary of the Philadelphia and Reading Railroad Company; yes.

"(Paper identified, offered in evidence by Mr. Todd as 'Government Exhibit, No. 152.')

"Judge MOOT: I repeat my objection on behalf of all the defendants who do not appear in any way to be connected with these documents.

"(Judge Campbell repeated his objection to the offer in evidence of these documents.)

"By Mr. TODD:

"Q. Do you recall what office Mr. Thomas Dickson held with the Delaware and Hudson Canal Company at that time?

"A. I think he was president.

"Q. Do you recall what office Mr. John Taylor Johnston
643 held with the Central Railroad Company of New Jersey at this time?

"A. He was the president of the Central Railroad Company of New Jersey.

"Q. What office did Mr. A. Pardee hold in the Lehigh Valley Railroad Company at the time this instrument was executed?

"A. I do not think Mr. A. Pardee was officially connected with the Lehigh Valley Railroad Company. He may have been a director.

"Q. At the time this instrument was executed, Mr. Franklin B. Gowen was president of the Philadelphia and Reading Railroad Company, was he not?

"A. Yes, sir.

"Q. It appears on the instrument itself that Mr. Samuel Sloan was president of the Delaware, Lackawanna and Western Railroad Company, and that Mr. George A. Hoyt was vice-president of the Pennsylvania Coal Company. That is in accordance with your recollection, is it not?

"A. Yes, sir.

"Q. Did the Philadelphia and Reading Railroad Company, so far as you know, live up to this plan?

"A. I had no real connection with matters of that kind at that date.

"Q. You do not know?

"A. No, sir.

"Q. In looking for this agreement did you run across any others of the same general character?

"A. No other agreement of that character did I find among the other papers that I have.

"Q. Is Mr. Dickson, Mr. Johnston, Mr. A. Pardee, Mr. Samuel Sloan, Mr. George A. Hoyt, or Mr. Franklin B. Gowen now living?

"A. None of them are living."

8. Strike out and suppress that printed exhibit known as No. 152,
appearing in the printed exhibits at pages 315 to 319, such
644 exhibit being there identified as a "Plan for Government of Anthracite Coal Trade for year 1876."

9. Strike out and suppress all those portions of the testimony of the witness Henry S. Fielding appearing upon pages 408 and 409 of the printed testimony, which read as follows, to wit:—

"Q. When you first went with this association in 1895, do you know anything about the practice, if such practice existed, of the railroad companies charging independent operators their published rates and then making a settlement at the end of the month, or at some other stated time, on the basis of forty per cent. of the price at tide water?

"Judge MOOT: I object to this question as incompetent, because it is not within the allegations of the petition; because it does not specify any defendant, but groups them all; because it assumes a practice not proven, and because it necessarily rests, as it shows, on the thought that the witness can testify on the subject from mere hearsay or rumor.

"Judge CAMPBELL: I object because the subject-matter inquired of is in nowise under consideration in this case; if the practice existed it was not in violation of any law which is the subject of inquiry in this case; and especially because if the practice existed, it was after 1901 only an offense against the Act to regulate commerce; in addition, if such a practice prevailed, it should be proven by the best evidence; that is to say, competent witnesses having personal knowledge of such dealings and transactions.

"A. I have no personal knowledge of anything of that kind.

"Q. What is your information on the subject?

"(Judge Moot made the same objection to this question, and objected on the further ground that it now appears by the wit-
645 ness's answer that his answer must be rested on hearsay or rumor, and, therefore, upon an incompetent basis.)

"Judge Campbell repeated his objection.)

"A. In my first year or more with the association, matters of this kind did not come before me at all. Later I have heard things of that kind from various of the operators; I do not remember who.

"Judge CAMPBELL: I give notice here of a motion to strike out any testimony of this witness bearing upon the subject which he had derived from conversations with various operators or conversations with other people.

"By Mr. MCREYNOLDS:

"Q. That matter was a subject of frequent discussion in your association?

"A. No, it was not. Things of that kind I heard occasionally as I went around among the operators.

"By Judge CAMPBELL:

"Q. Private conversations with individual members?

"A. Simply speaking to the members about their general affairs, that might have been mentioned, as my recollection goes."

10. Strike out and suppress all those portions of the testimony of the witness Henry S. Fleming which appears in the printed testimony at pages 413 to 415, and read as follows, to wit:—

"Q. I show you a copy of the association letter issued by the Anthracite Coal Operators' Association for September, 1898. On page 7 I read this: 'The individual operators whose tonnage will be free early next year, will have between eight and nine millions of tons to market on their own account. Look at that statement and tell us whether you wrote it and whether those facts were true (handing pamphlet to witness).

646 "A. I undoubtedly wrote that, and, so far as I know, the facts were true.

"Q. Did you take action at that time to inform yourself about that?

"A. Yes, it says 'about' there and that would be correct, I think.

"Q. what did you mean by being "free"?

"A. That is, the old contracts would expire. That is my recollection.

"Q. You mean the contract which they had with the coal companies controlled by the railroads would expire in the early part of 1899?

"A. That is evidently what is referred to there; yes.

"Q. I show you a copy of the association letter issued by the Anthracite Coal Operators' Association for January, 1899. From page 4 I read this: 'Further, while maintaining these high freight rates against the individual operators, the railroads have openly been guilty of discriminating against them, both as regards the conduct of their own mines and in the transportation of the product of other companies. What is the rate being charged the Delaware and Hudson Canal Company? It is only a fraction of that which the Erie Railroad charges the individual operators on its lines.' Look at that statement and tell us whether you wrote it, and whether the facts were as you understood them then and now, and what you meant by the discrimination practiced against the individual operators?

"Judge Moot: I object. As far as I recall, there is nothing in the statutes or the decisions of the courts to the effect that the railways are to be condemned offhand, without trial or hearing, by the opinion of any gentleman in any magazine or newspaper, to the effect that they are guilty, where that gentleman states, as this witness has, that his only information on the subject was gathered from individual conversations with individual operators in which

647 they made their individual charges against the railroads, and I respectfully submit that Government counsel should not put on the record of the court such a question, or permit a witness to answer such a question if he would be willing to answer it.

"(Question read.)

"A. To the best of my recollection I wrote the article, and the statements that are made there are those which were made to me by the operators, the members of our association, and were used in that way. We were not too exceedingly particular about getting every-

thing down in the cold facts. We did not have to get down so far. What we were after was to drive the railroads as hard as we could from every point of view, and that statement, if I was called on to back up and prove, I could not prove. I could not have proved it at that time excepting throu- the statements of our people, that so and so was the case, upon the strength of which I made this statement.

"Q. Who were the individual operators being discriminated against at that time, according to your recollection?

"Judge Moot: I wish to make the same objection and the further objection that it further appears, by the last answer of the witness, that it is pure hearsay and, as such, it never was competent in either a civil or criminal court of this country, either State or Federal. I object further that the witness is now asked to make further hearsay declaration on this subject, without even being inquired of as to the person who gave it, or any reason for giving it from the lips of this witness instead of that witness, that he might be cross examined, and we have neither time, place, nor circumstance in the record by which to try the truth or falsity of this hearsay statement thus put on the record without the sanction of an oath, through the mouth of this witness.

"A. My recollection is rather hazy on that now. As it is
648 in my mind, refreshed by that, I think what I was referring to there was a probable lower rate which we thought was being given to the Delaware and Hudson for the delivery of its coal, as compared with the rates that had been charged the operators. That is, the operators on the sixty per cent. basis were not receiving as much back at the mines as the Delaware and Hudson Company would be getting if they had a lower rate. That is simply my recollection; I do not know that as a fact.

"Q. These sixty-five per cent. contracts that were made between the railroad interests and the independent operators, did they relate back to sometime anteceding that date?

"A. That I really do not remember. I had very little to do with those; in fact, knew very little of them.

"Q. Can you tell us, while you were connected with the Anthracite Coal Operators' Association, whether there was a constant complaint on the part of those independent operators against the rate of freight that was charged?

"(Objected to by Judge Mott on the ground that there is not anything in the statutes, or the petition, or the decisions that makes an *ex parte* complaint by a shipper a cause of action by the Government and the ground of condemnation against the railroad without a hearing.

"Major WARREN: I would like to add the objection that the witness now is asked to state an alleged complaint that was given to him by somebody.

"A. I can say very properly that there was not anything that the railroads did that the individual operators did not complain about.

"Q. Please answer my question specifically.

"A. As nearly as I can remember, the operators complained of the

rates, and my opinion is that they would have complained of any other rate that they had.

649 "Q. It was a constant source of complaint that these rates were too high?

"(Major Warren objected to the question as incompetent.)

"A. The constant complaint was that they wanted more money; they wanted a larger proportion.

"Q. Answer my question specifically, please.

"Judge Moot: I object on the ground that the question of the counsel of the Government is incompetent, in form it is leading and violates the rules of evidence, and he may not put his own evidence in the mouth of the witness.

"A. I cannot answer that the complaints were directed at the freight rate being too high. The whole gist of the thing was that they wanted more money at the mines and wanted a larger proportion of the tide-water price. That comes back to that.

"Q. How could that apply to individual operators who were selling their own coal?

"—. The tide-water was the higher price, and if the other people were getting more money, they would get more money, naturally.

"Q. How could they get more money from the railroad companies when they were not selling to the railroad companies?

"A. I presume that would be done through the very matter you referred to, if there was an adjustment of rates, bringing it back to the same rate as the contract rate.

"Q. Do I understand there was an adjustment of rates at that time?

"A. I do not know that. I presume that there was. That was simply my idea.

"Q. How did you get that idea?

"A. As I said before in my answer, from talking with the operators."

11. Strike out and suppress all those portions of the testimony of the witness Edward S. Fuller which appear in the printed

650 testimony at pages 474 to 477, which read as follows, to wit:—

"Q. While the Anthracite Coal Operators' Association was in operation there was a journal published by it called the 'Association Letter,' was there not?

"A. Yes, sir.

"Q. And that letter contained, from time to time, the proceedings of the association?

"A. Yes, sir.

"Q. I show you a copy of that letter for December, 1899, in which, on page 6 and following pages, there is an account of a meeting held on November 22d, 1899, at which a certain resolution was passed. I ask you to examine that publication and account of that meeting, and state whether or not it corresponds with the facts.

"Judge Campbell: I object to the introduction of this testimony as incompetent and immaterial.

"Judge Moot also objected to this testimony.

"A. (After looking at journal referred to.) I would like to correct my testimony, to this extent: I was unaware of the fact that I was chairman of the Executive Committee; it is so long ago that I had forgotten. I see by this that I was.

"(Question read to the witness.)

"A. I should say so.

"By Mr. McREYNOLDS:

"Q. Please read into the record the account of that meeting from the beginning down through the first resolution that was passed.

"Judge MOOT: I demand of the Government counsel, as my right, an opportunity to examine this publication before the witness reads into the record, in order that from such examination I may make such objections as appear, upon the face of that publication to be there disclosed, as objections that should be made to the form of the question and to the substance of the testimony sought to be ad-
651 duced in this way without making an exhibit of the document to be read or in submitting it to the inspection of counsel that he may frame his objections to it.

"Mr. McREYNOLDS: Read into the record what I have asked you and then turn it over to counsel for his inspection.

"The witness read the following from 'The Association Letter of December, 1899.'

" 'A stated meeting of the Anthracite Coal Operators' Association was held at the Hotel Waldorf-Astoria, in New York, on November 22, 1899. Luncheon was served, and at its conclusion the members were called to order.

" 'Mr. E. L. Fuller, chairman of the Executive Committee, on being called upon, told of the efforts which have been made to induce the various anthracite railroads to offer more satisfactory terms for the purchase of the operators' coal, and of the absolute failure of these efforts to bring about any definite result. He then reported the organization of the Delaware Valley and Kingston Railroad, backed by the Pennsylvania Coal Company, and the proffer of this latter company to purchase coal from operators in the Wyoming and Lehigh region, paying sixty-five per cent. of the tide-water price for chestnut and larger; fifty per cent. for pea coal, and a flat eighty-five-cent freight rate on buckwheat and smaller sizes. These contracts were to be for all of the coal in the ground, thus settling permanently the price which the operator would receive.

" 'After extended discussion as to the details of these contracts, and a comparison with the results obtained under the old contracts, the following resolution was offered and passed unanimously:

" 'Whereas the Erie and Wyoming Valley Railroad Company has arranged to build a branch line from Hawley, Pa., to a point on the boundary line between New York and Pennsylvania at Lackawaxen, forming a connection with a railroad proposed to be con-
652 structed by the Delaware Valley and Kingston Railroad Company to tide water, at Kingston, on the Hudson river;

"'And whereas the construction of the said railroad is approved and promoted by the Pennsylvania Coal Company, which has large interests in the anthracite coal region;

"'And whereas the independent operators and the general public are now largely at the mercy of existing railroad companies, which charge unreasonable rates for their services, owing in part to the large amounts for which the said companies have been capitalized;

"'And whereas, it would be highly advantageous to all the independent owners of coal properties throughout the entire anthracite region of Pennsylvania to have the railroad connection, now proposed, completed as speedily as possible;

"'And whereas it is equally desirable, in the interests of the people of the State of New York, and the public in general, that such railroad connection shall be made (since it will necessarily result in a material reduction of the price paid for anthracite coal by consumers, now, therefore, it is

"'Resolved, I. That this association hereby expresses its hearty and unqualified approval of the proposed plan for the construction of the said railroads, and hereby pledges its constant support and active assistance in promoting the speedy construction and completion of the said railroads.

"'II. That a committee of three be appointed by the president, of which the president shall be a member, to take such steps as may be deemed advisable toward furthering the said plans and co-operating with the said companies for the completion of the said railroad, and that a report of their proceedings be submitted to the next meeting of this association.

"'In the discussion which followed, it was the opinion of those present that, in view of the hearty assistance which had been accorded the operators by the Pennsylvania Coal Company, it was the
653 duty of the members to give to this company all of the tonnage which they could deliver and not to permit any more advantageous offers which the older companies might make, to divert freight from a road which was constructed to give the operators a fair share in the selling price. A vote of thanks was accorded Mr. Fuller for his labor and great success in accomplishing a work which was for the advantage of every individual operator in the anthracite regions. * * *'

"Judge MOOT: I object further, on the ground that the witness having read this extract into the record, by direction of the Government counsel, it now appears therefrom that it is a hearsay newspaper trial and condemnation of the defendants, or some of them, supposedly, not identified by name, date, circumstance, or charge, or under circumstances applicable here under the allegations of the petition, and on the ground that the same is not competent proof of the facts stated, but is mere hearsay, improper, and incompetent for any purpose. I give notice, in behalf of the defendants, that we shall make a motion to strike it out, and shall claim that it is no proof of any or either of the facts stated therein, except that there was a meeting and that it did pass resolutions.

"By Mr. McREYNOLDS:

"Q. You were present at the meeting, the account of which you have just read from the 'Letter' of the Independent Coal Operators' Association?

"A. Yes, sir.

"Q. State whether or not the minutes which you have read express your recollection of what took place?

"A. Yes, sir."

12. Strike out and suppress all those portions of the testimony of the witness William Griffith which appear in the printed testimony at pages 537 to 539, and read as follows, to wit:—

654 "Q. In this same article of yours in 'The Bond Record,' June, 1896, following almost immediately after the estimate, I find, on page 502, the following:

" 'The following comparison of percentages of shipment allotment and tonnage reserve will also be interesting in this connection:—

	Percentage of shipment, 1895.	Percentage of allotment, 1896	Percentage of future supply controlled.
Delaware, Lackawanna & Western R. R. Co.	13.16	13.35	6.55
Delaware & Hudson Canal Co.	9.34	9.60	2.29
Erie & Wyoming Valley R.R.Co.	3.75	4.00	1.82
Erie R. R. Co.	3.91	4.00	.77
New York, Ontario & Western Ry. Co.	3.06	3.10	.28
New York, Susquehanna & Western R. R. Co.	3.02	3.20	.54
Delaware, Susquehanna & Schuylkill R. R. Co.	4.11	3.50	1.38
Pennsylvania Railroad Co.	10.59	11.40	6.24
Central Railroad of New Jersey.	11.51	11.70	17.30
Lehigh Valley Railroad Co.	15.81	15.65	16.87
Philadelphia & Reading R.R.Co.	21.47	20.50	42.25
Uncontrolled tonnage	.....	.....	3.71
Total (see diagram on page 501)			100.00

" 'From this we see that the corporations named control, either directly or indirectly through their sub-companies, 96.29 per cent. of the available tonnage of the future, and in about the following manner:—

	Per cent.
They own, by actual purchase or its equivalent	90.93
They control by long term contracts, say about	3.36
They control by short term contracts of various kinds, say	2.00
	96.29
Uncontrolled, *i. e.*, remaining in private hands	3.71
Total	**100.00**

655 "Explain what those two tables are?

"(Objected to by Judge Moot on the ground that it appears by the testimony of the witness that it is based on hearsay, and that hearsay is not competent evidence, or a proper sort from which to derive evidence to support the principal allegation in the petition.)

"A. The first one has three columns, headed 'Percentage of shipment, 1895,' 'Percentage of allotment, 1896,' and 'Percentage of future supply controlled,' and I think the headings of these columns state what they are sufficiently well, perhaps. The first column gives the percentage of the total quantity of coal shipped to market by each of these interests during the year 1895. The second column shows what was at that time known as the allotment that was intended to be shipped by each of the interests at that time, proportioned by some trade arrangement they had, and the third column shows the percentage of the coal that each of the interests possessed.

"Q. In that column you simply work out from the estimate which has already been put in evidence the percentage of the unmined coal possessed by the different interests?

"A. Possessed by the different interests; yes, sir. Hardly that. It is not the percentage of the unmined coal; it is the percentage of the unmined coal which may be shipped. I am somewhat particular about that, because most all other estimates that are made have reference to the production, and almost everybody who has quoted this estimate refers to it as an estimate of production, and that is an erroneous notion.

"By Mr. McREYNOLDS:

"Q. You mean that you have worked out in this little table from the figures which you have already described and the experience or information which you have already described, these percentages?

"A. Yes, sir.

656 "Q. And do you mean, for instance, that the Lehigh Valley Railroad Company of the total coal mined in 1895 shipped out of the anthracite region 15.81 per cent.?

"A. Yes, sir.

"Q. Then you have under the column 'Percentage of allotment, 1896,' opposite the Lehigh Valley Railroad Company, 15.65 per cent. What does that mean?

"A. That means that was the proportion that it was arranged they should ship during that year.

"Q. Arranged by whom?

"(Objected to by Major Warren as incompetent and hearsay.)

"A. At that time it was the custom of the interests mining coal in the anthracite region to apportion to each road the quantity of coal that they should ship during the year. That was a matter of common knowledge by everybody.

"By Mr. McREYNOLDS:

"Q. So, under the title of 'Percentage of allotment 1896,' you

have included the percentages which your information led you to understand had been apportioned among those various interests?

"A. Yes, sir.

"Q. Under the column of 'Percentage of further supply controlled,' you referred to what you have been narrating, namely, the amount of coal that might thereafter be taken out of the mines and actually shipped away to market?

"A. Yes, sir.

"Q. For instance, I understand from this table that you estimated on the first of January, 1896, the Philadelphia and Reading Railway Company, either through direct holdings, or through a coal company, or one or more, which it owned or controlled, controlled 42 25.100 per cent. of the future supply of anthracite coal in Pennsylvania?

"A. Yes, sir.

657 "By Mr. TODD:

"Q. Do you happen to know how the three different trade regions rank in point of productiveness?

"A. Yes, sir; I do. I do not know that I can give you the exact figures. The northern field produces approximately half the coal that is produced, the middle field, or Mahanoy region, produces the next highest tonnage, and the southern field the next, and the Lehigh Valley region the smallest. The table on page 6, volume 4, of The Bond Record shows that.

"By Mr. MCREYNOLDS:

"Q. Did you make up, in connection with the same investigation, a table for the year 1893, called the 'Anthracite Tonnage Table?'

"A. I did.

"Q. Does it show accurately what you ascertained at the time to be the facts?

"A. Yes, sir.

"Table referred to offered in evidence by Government's counsel as Government Exhibit No. 158."

13. Strike out of the exhibits and suppress that exhibit known as No. 157, where it appears in the printed exhibits at pages 329 and 329.

14. Strike out of the exhibits and suppress that exhibit known as No. 158, which appears in the printed exhibits at pages 330 and 331.

15. Strike out and suppress that printed exhibit known as 159 appearing in the printed exhibits at pages 340 to 380, upon the ground that the same purports to be a certified copy of the testimony of Alfred Walter, a witness before the Interstate Commerce Commission, an administrative board, in a proceeding wherein the parties were not the same and the issues were not the same as those before the court herein, and upon the further ground that the objections made
658 to said exhibit when it was introduced in evidence were well taken, as appears by the printed testimony, pages 580 and 581, which read as follows, to wit:—

"Mr. McREYNOLDS: The death of Mr. Alfred Walter, formerly president of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company, has been shown heretofore by the testimony of witnesses. Mr. Walter was a witness in the proceedings before the Interstate Commerce Commission wherein William Randolph Hearst was petitioner and complainant and the Philadelphia and Reading Railway Company and others defendants. The Government offers in evidence a properly certified copy of the petition and answers in that proceeding, and of the testimony of Mr. Walter given therein, and makes the same a part of the record as Government Exhibit No. 159.

"Judge MOOT: Defendants object, upon the ground that the Interstate Commerce Commission is not a court, the alleged testimony was not given in a court, or upon any of the issues presented by the pleadings in this suit; the alleged testimony was given on May 24th, 1904, at a time so removed from the time of the bringing of this suit, and the taking of the testimony in this suit as to make it irrelevant and incompetent, even were it otherwise competent herein. Furthermore, it appears from the exhibit offered that the parties are not the same, the object of the proceeding is not the same, and the issues are not the same, and the proceeding itself was not a judicial proceeding. If the substance of any part of the exhibit is competent, then the Government should establish the same by a witness who may be cross-examined as to the statements on the basis of the issues in this suit.

"Major WARREN: Representing the Temple Iron Company, I desire especially to object for the reason stated by other counsel
659 representing other defendants, and for the further reason that this transcript of the testimony of Mr. Walter discloses the introduction of plainly incompetent and hearsay evidence, and mere rumor in many instances, and before the Interstate Commerce Commission there was no way to either restrain the witness and confine him to competent and legal testimony, or to strike out thereafter the same by appropriate legal motions, no objections could be noted such as can be noted in a court of justice, and the offer now is to introduce this transcript *in extenso* and in its entirety, with the hearsay, incompetent and irrelevant testimony founded, in part at least, as to matters affecting the Temple Iron Company, upon nothing but rumor, and therefore I especially desire to note an objection to the introduction of this *en masse* as being in violation of the rules ordinarily and generally applicable to the introduction of the testimony of a deceased witness taken in a court of record.

"Judge MOOT: I object, further, on the ground that the testimony of a deceased witness is not competent or material evidence in a suit of this character.

"(Mr. Schapperkotter desired it noted that he made the same objection as noted by Judge Moot.)

"The transcript offered is received in evidence and marked Government Exhibit No. 159."

16. Strike out and suppress those two exhibits known as exhibits Nos. 160 and 181, appearing in the printed exhibits, pages 381 to 391, and pages 438 to 441, the grounds of objection thereto at the time being stated in printed testimony, page 581, as follows, to wit:—

"The defendants severally object to this exhibit upon the ground that the rate sheets themselves, or certified copies thereof, are the only competent evidence, under the statute, which provides for filing such rate sheets or tariffs with the Interstate Commerce Commission; and upon the further ground that they are highly technical in
660 character, and no mere compilation from them such as this exhibit purports to be, is sufficiently accurate or full in detail to furnish on this record the facts essential upon the issues as to which the filed rates or tariffs are the only competent evidence."

17. Strike out and suppress those exhibits known as exhibits 162, 163, 164, 165, 166, 167 and 168, being so-called "Temple Iron Company contract, appearing at pages 391 to 416 of the printed exhibits, upon the ground that the same concern the purchase and sale of coal lands and stocks in coal mining corporations in the State of Pennsylvania, and upon the grounds further stated upon page 29 of the printed testimony in objection to percentage contracts for the purchase of coal.

19. Strike out and suppress the whole of the testimony of the witness John H. Jones appearing in printed testimony, pages 591 to 605, reading as follows, to wit:—

"JOHN H. JONES, a witness for the plaintiff, having been duly affirmed, was examined as follows:

"Direct examination by Mr. MCREYNOLDS:

"Q. Where is your home and what is your occupation?

"A. My home is in this city, in Germantown. I have been, within a year and a half of this date, connected with the Philadelphia and Reading Railway Company and the Philadelphia and Reading Railroad Company for thirty-five or forty years. At present I am retired.

"Q. Do you remember testifying in or about the year 1886 in a proceeding instituted by the State of Pennsylvania against certain anthracite carriers and operators?

"A. Yes; I have a recollection of testifying in that case, but I have no recollection of the testimony at all. It has all gone out of my mind.

"Q. When did you first become connected with the Philadelphia and Reading Railroad Company?

661 "A. I will have to explain that. I came into the employ of the Philadelphia and Reading Railroad Company in 1872, at the time of the transfer of the property of the Catawissa Railroad to the Reading under lease.

"Q. Did you continue in the employ of the Philadelphia and Reading Railroad Company, its receivers or its successors the Philadelphia and Reading Railway Company, down to within the last two years?

"A. I was not absolutely directly connected with the Reading

Railroad Company for a period of about four years, between 1888 and 1892.

"Q. What connection have you had at any time with the bureau of anthracite coal statistics?

"A. I came into connection with that bureau in 1876, when I was called here from Williamsport by Mr. Gowen, then president of the Philadelphia and Reading Railroad Company, in a clerical capacity, and I at that time resigned my position with the railroad and opened what is now the bureau of anthracite coal statistics. At that time the statistics were of a very different character from what they are to-day. The bureau of statistics has grown to be quite a useful appendix to the whole coal trade, whereas with the original inception of it it took in only the tide-water coal at New York, only the tide-water tonnage of the various large companies.

"Q. You were the individual who started the bureau, were you not?

"A. Yes, sir; excepting that there were statements made in New York for about two years prior to my incumbency that were thrown into my accounts afterwards, and I carried them forward.

"Q. How long did you continue with that bureau of anthracite coal statistics?

"A. I think until 1892.

"Q. Then who took charge of it?

"A. Mr. Ruley.

"Q. And he has continued in charge of it down to date?

662 "A. Yes, sir.

"Q. In 1876, as already appears from the proof, a committee consisting of Mr. Thomas Dickson and Mr. F. B. Gowen submitted a plan for the government of the anthracite coal trade to competitive points for the year 1876, which was afterwards adopted by representatives of certain coal-carrying roads. That report provided for the employment of an expert accountant as an assistant to the secretary and treasurer, to keep the tonnage accounts of the several companies and to receive, examine, and report upon the tonnage returns received from each interest. Were you appointed as that expert accountant?

"(Objected to by Judge Moot on the ground that it assumes a state of facts not proved by competent or proper evidence as the basis of the question to the witness, and a state of facts incompetent under the pleadings in this case.)

"A. I was.

"Q. How long did you continue to act as the expert accountant?

"A. The first year was 1876. This arrangement went to pieces about August of that year and I resumed my place with the Reading Railroad again. In 1877 they had a general blowout, and one of the worst years of the anthracite coal business, and there were no accounts or anything else kept. The following year, 1878, as I recollect it, we—I say 'we,' the interests represented in the names you read there just now—undertook again to make some sort of an arrangement and agreement between themselves. That was in 1878. I think that in

1879 it was omitted again. In 1880, somewhere about that time, I myself secured consent from the various coal interests to establish a bureau of anthracite coal statistics that would embody all the product and separate the competitive and the local and keep it as a matter of information for those who were connected with the coal
663 business—simply a matter of information, which bound nobody, had nothing to do with anything of that kind. They paid me my salary and I did the work. They concluded it would be a good thing. That has been going along ever since.

"Q. You continued to keep this same sort of statistics until you gave it up in 1892?

"A. Yes.

"Q. In 1876, who paid your salary?

"A. The board of control paid my salary up to the time that we quit.

"Q. That was about in August, 1876?

"A. Yes.

"Q. After August, 1876, and up to 1880, did you continue to keep the same sort of statistics?

"A. I went back and did it. I omitted it for some years, but when I came to get the whole coal statistics under my hand, together, to establish this bureau, I went back and brought up some statistics that were not very correct.

"Q. But as good as you could get from what information you had?

"A. Yes.

"Q. After 1880 you were paid a regular salary for keeping these statistics, furnishing the information to the parties in interest?

"A. Yes, sir.

"Q. Who paid that salary?

"A. Each one of the companies paid me their proportion.

"Q. You mean each one of the coal-carrying railroads?

"A. Yes; those that were furnishing these statistics.

"Q. Will you put in the record the names of those that were furnishing you statistics?

"A. No; I can not do it.

"Q. Give us some of them, please. Were they the same ones that had been interested in that arrangement in 1876?

664 "A. Yes; the same ones, practically. As I remember it, there was Mr. Dickson and Mr. Hoyt and Mr. Gowen.

"Q. I presume you sold out this business to Mr. Ruley?

"A. You call it 'sold out'—we had other things connected with it. I did sell him the business, but it was not based upon coal particularly; the coal was part of it.

"Q. Were the records of the bureau which you had kept and compiled turned over to Mr. Ruley?

"A. Yes, sir.

"Q. So far as you know, he still keeps them?

"A. So far as I know, he still keeps them.

"Q. Was Mr. Ruley connected with you while you were the active head of the bureau?

"A. Yes; he came to me two or three years before 1892.

"Cross-examination by Judge MOOT:

"Q. Did you have any connection with the Government census, or Geological Survey, or anything of that kind during those years with reference to those statistics?

"A. I had charge of the United States census for coal, the Eleventh Census, for the ten years prior to 1890. The census was as of 1890; that is, it was for the ten years from 1880 to 1890, but I did not get at it until 1889—I do not know but that it was a little before that when I got to work at it—and it took me two or three years to finish it, so that when it was completed it was as of 1890 for the ten previous years.

"Q. Did you have any connection with the Government census or Geological Survey, or any Government publications or compilations of statistics, except for that census of 1890 for the ten previous years, so far as you can recall?

"A. I cannot remember that. I do not know that I can answer that correctly.

665 "Q. On this other subject, if I understand you correctly, you say there was some arrangement back in 1876 under which you were brought to Philadelphia by Mr. Gowen to get together the statistics for the tide-water coal of the large companies sending coal to tide-water at New York; is that correct?

"A. Yes, sir.

"Q. Mr. Gowen was then representing what company, in what capacity?

"A. He was president of the Philadelphia and Reading Railroad Company.

"Q. That arrangement, whatever it was, was some arrangement of which you got your knowledge in what way?

"A. Simply by keeping the minutes and by what Mr. Gowen may have said in my hearing.

"Q. You said that went to pieces in 1877?

"A. No; it went to pieces, really, in August, 1876.

"Q. I understood you to say there was none in 1877?

"A. I was not authorized to keep any statistics during that year.

"Q. I understood you to say the coal trade's condition was very bad in 1877 and there was no arrangement in 1877 concerning it; is that correct?

"A. That is correct, as far as I remember.

"Q. Was your source of information at that time as to that condition the same?

"A. No; I should say not. I just knew what was going on; that was all.

"Q. Was it in 1878 that you said there was again some attempt to make some kind of an arrangement?

"A. Yes, sir.

"Q. Your source of information as to that was again the same?

"A. I can hardly tell now. I have a recollection that these men had meetings, and so forth, and that they were discussing

666 that part of the question, and then I was instructed to keep the statistics of the shipments for the year 1878.

"Q. These arrangements, then, according to your recollection, were arrangements between these gentlemen verbally and not by anything signed as a written agreement?

"A. That is a hard question to answer, because, as I was in position of clerk to the secretary, I read a great many things and saw a great many things that, of course, I never expected to have to tell anybody about.

"Q. But what I am getting at is the foundation of the thing. You speak of it as an arrangement and I drew my inference, from your use of the word 'arrangement,' that it was something that they arranged between them verbally in some way.

"A. It was. There were some records or memoranda made of the arrangement.

"Q. This arrangement for 1876, which went to pieces in August of 1876, do you know or have you any recollection as to how long a period of time that was formed for?

"A. I do not recall what provision there was in that agreement for its life. I do not remember.

"Q. Can you give us any information as to whether it went to pieces prematurely in August of 1876 or whether it went to pieces by expiration?

"A. No, sir; it did not. I can say to you that it went to pieces prematurely. It simply went to pieces because they did not live up to their agreement.

"Q. Or arrangement?

"A. Arrangement; whatever it was.

"Q. And so it went to pieces?

"A. It went to pieces.

"Q. They could not agree among themselves about what they were to do?

"A. That is it.

"Q. The next one, in 1878; was that also a verbal arrangement, according to your recollection?

667 "A. That is the point that I stumbled on before, and that is the point I feel I can give you an answer on now. There was at one time for a short period of time—I do not remember how long; it was less than a year—an agreement to forfeit a certain amount of money for a violation of that agreement.

"Q. That, I infer, was a written paper?

"A. Oh, yes. That agreement was, I think, made in 1878. I am not quite sure of that.

"Q. You say that was for a period of less than a year?

"A. Less than a year. It was only for two or three months. It was only a short time, but the agreement was made to forfeit money for any violation of the agreement.

"Q. The agreement itself provided for its own termination in a short period of time?

"A. Yes; as I remember, it went the way of all the rest of them. They did not agree and quit.

"Q. As you remember it, did the agreement itself provide any way that it should terminate?

"A. No; I do not know that. I can not tell you that.

"Q. But anyhow, the agreement, with this provision for a forfeiture, you say, was followed by dissolution?

"A. My recollection is that they did dissolve in 1879. I am not very sure of that. I can not tell by the statistics, because I went back and remodeled those statistics in places.

"Q. Picked them up, so to speak?

"A. Picked them up and brought them into line, so that they answer now as a basis of information for anybody that wants to use them. I can not tell how long that agreement lasted. The money-forfeit part of it was only for a little while, and they discontinued that. In fact, I know several of them did not put up their deposit at all.

"Q. Do you know whether any money was actually paid as a forfeit under that agreement?

668 "A. Nobody but got it back again.

"Q. That is, their deposits were paid back again?

"A. Yes, sir.

"Q. That is, the deposit was not used to pay forfeit by anybody?

"A. It was used once to pay a forfeit, but when they found they could not apply it universally there was so much dissension that they just refunded it to the party that had paid, and that ended the transaction.

"Q. That is, as some would not contribute, the fellows that did contribute were unwilling it should be paid over for the benefit of those that did not?

"A. Yes; it was simply paid back to them. It was a failure.

"Q. The time of this forfeiture business and the way it worked out you would place, according to your best recollection, about when?

"A. I would place it about 1878 or 1879; that it my recollection. You must take that with some allowance, however.

"Q. Following that difference and dissolution they again went as you please, so to speak, as I understood you, and worked out their own business until 1880, when you got this permission to establish the bureau?

"A. No; I went back to the Reading Railroad Company and was chief clerk for the chief engineer for a year or two, and then we established this bureau that I have referred to.

"Q. In 1880?

"A. In 1880.

"Q. The statistics for the years previous to 1880 were gathered on a different basis from what they were after 1880?

"A. Yes, sir.

"Q. Before 1880 they were with reference to tidewater coal and large companies only?

"A. Yes.

669 "Q. After 1880 they were with reference to coal generally, and all the companies producing it?

"A. Yes; that is right.

"Q. Before 1880 the statistics were gotten together at the expense

of the companies for whom they were gotten together, and those companies paid for getting them together?

"A. That is true.

"Q. After 1880 the statistics were got together by yourself, by this authority which you got from the different producers, for the benefit of all the producers?

"A. Yes; each one of the companies sent me a statement every month of their tonnage, of their particular tonnage. I say 'each company;' I think there was one or two of the companies that did not do it, that did not furnish me with the information, but I had a means of getting that approximately, and I filled up my records so that they would be complete—as complete as anybody could get them. It would be impossible to make them any more so. I think there were only one or two companies that did not furnish me directly with their statistics.

"Q. Have you any recollection what companies they were?

"A. The Pennsylvania Railroad Company was one, but their policy did not always remain that way. But they did refuse to give me any other figures excepting those which I found in the 'Public Ledger,' which they furnished. I found how those figures were made up, and they were not complete for my purposes, so that I had to supplement them with some information I gathered from other sources.

"Q. After you established that bureau in that way in 1880, were you drawing a salary from any one of those companies yourself, while you were conducting that bureau?

"A. No; I made a bargain with them on the basis of tonnage.

670 "Q. With the different companies?

"A. With the different companies, and they paid me my salary. The Philadelphia and Reading Railroad Company paid me their share, whatever it was, of the tonnage shipped.

"Q. When you say they paid you your salary, you mean they paid you on the basis of the tonnage?

"A. That is right. That is what I said, I think.

"Q. Do you remember how many companies paid you for doing this work on the basis of their respective tonnage?

"A. I think there were eight companies. It is in my reports which have been published time and again.

"Q. I will name over some of the companies. Was the Philadelphia and Reading Railroad Company one?

"A. Yes.

"Q. Was the Pennsylvania Railroad Company one?

"A. Upon my word, I can not answer that now.

"Q. The Pennsylvania Railroad Company was not one of those that paid you while they refused to furnish the figures, were they?

"A. No, sir.

"Q. There came a time when they did furnish the figures?

"A. Yes.

"Q. Do you remember whether they paid anything then?

"A. Yes; they paid.

"Q. After they did furnish the figures, they paid on the tonnage basis whatever you got for doing this work?

"A. Yes, sir.

"Q. Do you remember whether the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company paid or not?

"A. The Lehigh Valley Railroad Company paid me.

671 "Q. Did the Erie Railroad Company?

"A. Yes.

"Q. The Delaware, Lackawanna and Western Railroad Company?

"A. Yes.

"Q. The Delaware and Hudson Railroad Company?

"A. Yes, sir.

"Q. The New York, Ontario and Western Railroad Company?

"A. I can not answer that, because there was a change of name and ownership came in along there somewhere, and I do not know just how that was.

"Q. I call your attention to a statement on page 689 of this volume of 'Labor troubles in the anthracite regions of Pennsylvania, 1887, 1888.' That statement shows, 'Anthracite coal tonnage for the month of December, 1885, as compared with the same period last year. This statement includes the entire production of anthracite coal, excepting that consumed by employes, and for steam and heating purposes about the mines.' I assume you mean the entire production on those railway lines?

"A. Yes; and lines for which they accounted for the tonnage.

"Q. So that that was not a statement of the tonnage produced by those lines, but it was a statement of the tonnage carried by those lines, which might have been produced by independent operators?

"A. If you will pardon me, you are getting that a little confused there. The independent lines did not mine their coal. That did not comprise only the coal of the Philadelphia and Reading Coal and Iron Company, but it comprises coal from connecting lateral lines that were mined by other miners.

"Q. Who might have been independent miners?

"A. Who were independent miners.

"Q. And that is true of all these roads?

"A. The same principle is true of all of them.

672 "Q. So that it was an attempt rather to get the tonnage handled by the road than to get the tonnage produced by any particular operator?

"A. Undoubtedly.

"Q. That statement, I see, is a statement for the Philadelphia and Reading Railroad, the Lehigh Valley Railroad, the Delaware, Lackawanna and Western Railroad, the Delaware and Hudson Canal Company, the Pennsylvania Railroad, the Pennsylvania Coal Company, and the New York, Lake Erie and Western Railroad. For those larger companies, that seems to be a statement?

"A. Yes.

"Q. So that that is a list of the companies for which you were then compiling these tonnages, and which in turn, were at that time, De-

cember, 1885, paying you for your services in making this compilation on the basis of the tonnage?

"A. Yes, sir.

"Q. The Pennsylvania Coal Company at that time was a well-known independent operator?

"A. Yes, sir.

"Q. One of the leading ones?

"A. One of the leading ones.

"Q. And they were furnishing you with these tonnage figures and in turn were contributing to you for furnishing them with these statistics on the basis of the tonnage figures?

"A. Yes, sir.

"Q. After this forfeit arrangement or agreement went to pieces, do you remember whether any other was made during the time you were gathering these statistics?

"A. No, I do not remember whether any other was made during that time. My memory seems to indicate to me that I stopped making them for another year—that is about 1877—and then what they did in 1879 I can not answer on the moment; but then I took up this matter of making a regular bureau of anthracite coal sta-
673 tistics, and of course that took months to accomplish, but the figures dated from 1880, I think.

"Q. And then the thing went steadily forward?

"A. From that time forward there were no interruptions in the agreement—there really was no agreement that I know of. There was really no agreement whatever that I know anything of from that time forward.

"Q. About what did they pay you on this tonnage basis, these various companies? How was the thing gotten at practically?

"A. The basis of my pay was one cent for every one hundred tons. That was all—a simple basis, and we calculated it mighty quick after we got the information.

"Q. You went on, then, on that basis until you sold out your records, or whatever you had, to Mr. Ruley in 1892; is that right?

"A. Yes, sir.

"Q. I assume that what you received for your records and business, and so forth, was your own personal property and belongings?

"A. Undoubtedly so.

"Q. You did not account to any one of these people for it in any way, shape, or form?

"A. No, sir.

"Q. Because when you had furnished the tonnage and they had paid you for furnishing that tonnage, that ended your relations with them and theirs with you?

"A. Yes, sir; that is correct.

"Q. After you organized this bureau in 1880, who determined on the form in which you would make the statements, and on whether they should be given to the public press or not, and on whether they should be furnished to other people or not, and all that?

"A. The arrangement under which I had always worked
674 was that it should not be given to anybody except the officers of the railroads who were interested; that is, the officers in-

volved in the coal business. The figures we received from a certain officer of a company, and that officer would see that my check was duly paid.

"Q. When was it, if you know, that these statements first began to be published from month to month by the public press?

"A. We had a good deal of trouble about that thing, because I was constantly endeavoring to keep those figures in the channel in which they were originally intended to be kept, but somebody, somehow, would always get them into the papers. I do not know of any one thing that I had more trouble about than I did that.

"Q. Do you know whether the point was ever reached during your administration when you voluntarily made public these figures for publication?

"A. I will answer that in this way: There was no time when I voluntarily gave those figures to the public, but the press got them and there might have been several months in succession when I just passed it along and said nothing about it at all, and then I would try again and investigate again to try to find out who was betraying the confidence of those gentlemen, because I knew they understood that these figures were not to be given out to the public, and they often took me to task for their getting out. They were intended for the use of these gentlemen for the regulation of their tonnage, and not for the public at all; but there came a time, as I said, when we just let the matter go and did not attempt to restrict it.

"Q. By regulating their tonnage, you mean that it was information by which the officers of these railroads could make their orders for cars, provide for their rolling stock, provide their motive power and crews, and all that, and tell what they had to do in a
675 given period of time, probaoly, in the way of handling tonnage on their line?

"A. That is substantially it.

"Q. About how long did the thing run, as near as you can remember, before the giving out of these figures by somebody, in spite of you, became so common and habitual that you ceased to try to stop it, and the companies ceased to talk with you on that subject?

"A. I could not give you any specified time.

"Q. But there did come such a time?

"A. There did come such a time, but I do not just remember when that was.

"Q. There did come a time when that became so usual that you ceased to endeavor to restrict it?

"A. Yes; but never did we ourselves place those statements in the hands of the press.

"Q. During your period?

"A. During my period.

"Q. If that has been changed under Mr. Ruley, so that he gives the figures to the press, that is different from what you used to do?

"A. Yes, sir.

"Q. For the purpose of the Government publications, census, and all that, you used these figures about how early? Did you use them at all before 1880, as far as you remember, for such purposes?

"A. No.

"Q. But you did from 1880 to 1890?

"A. No; I did not, because I had an absolutely independent investigation for the census; that was an entirely different affair. Although some of these figures may have worked in, they were not adapted to it at all. It was on new blanks and new forms, and everything was entirely different.

"Q. What you said about each company paying part of your salary, then, was really based on this 1 cent for each one hundred tons?

"A. At first, no; not until they all got together with this
676 general statement of statistics did they pay on the percentage basis. Prior to that time whenever I worked for the bureau or for the coal statistics, they paid me a salary, which was the salary that Mr. Gowen paid me when he brought me down.

"Q. In other words, as nearly as you can give the date now, down to 1880 you were working on a salary fixed by Mr. Gowen, which each company contributed to, but after 1880 you had your independent bureau, from which you furnished this tonnage on this basis which you have stated, and they paid you a cent for each one hundred tons?

"A. I think that statement is correct.

"(Question repeated.)

"A. Prior to 1880 the salary I received, as I recollect now, was paid by Mr. Gowen, and when we established the bureau, then it was paid directly to me by each of the other companies. It was not paid directly to me under the original arrangement; Mr. Gowen paid it to me and charged it out to the other companies.

"Q. After 1880, when you say 'we' established a bureau, you mean yourself?

"A. Myself, in connection with all these other people. They had to agree to it, or I would not have gotten along at all.

"Q. But from 1880 you were paid no salary, but were paid on a tonnage basis, as I understand you?

"A. Yes, sir.

"Q. If you made more than a salary that was yours, and if you made less than a salary that was your loss?

"A. Yes; that is the practical working out of it.

"Q. Since 1892, as I understand you, you have had nothing to do with these statistics yourself?

"A. No, sir; but I did have to do with the census.

"Q. You said it took you two or three years; but I mean, so far as these companies are concerned, you had nothing to do with their statistics since 1892 except in connection with the census. Is that right?

677 "A. Yes, sir.

"Q. Your employment after 1892 was what?

"A. By the Reading Railroad Company.

"Q. In connection with their business?

"A. In connection with their business.

"Redirect examination.

"By Mr. McREYNOLDS:

"Q. You said the arrangement entered into in 1876, under which you were first employed as an accountant, you thought went to pieces about August of that year?

"A. Yes.

"Q. And that during the year 1877 the anthracite coal business was in a bad condition. What do you mean by being in a bad condition?

"A. I mean to say it was at the height of its worst competitive conditions.

"Q. While this agreement of 1876 was in effect this competitive condition was not so bad?

"A. No; it was adhered to until long in August, or a little later, when there was dissatisfaction, and they simply went home.

"Q. The agreement went to pieces?

"A. Yes, sir.

"Q. And the parties in interest began to compete with each other?

"A. That is it.

"Q. During 1877 that competition was very fierce?

"A. Very fierce.

"Q. Was that what you meant?

"A. Yes, sir.

"Q. Where is this agreement of 1878 in which there was a forfeiture provision?

"A. I do not know.

"Q. Did you ever see that agreement?

"A. I can not say that I ever did. I can not say that I did not, because I do not remember.

"Q. Have you any idea where it can be found?

"A. No.

678 "Q. Where, in the natural course of things, would it probably be found?

"A. I absolutely can not tell you a thing about it, and I am not trifling. I want to say that that book contained the minutes, entries and memoranda connected with what was originally the board of control. Some of them Mr. Gowen would write off and give me to copy as his clerk. Those were all in a book and that book was in my possession, and once when I went to look for it it was gone. I had remembered loaning it to one or two of the officers of the railroad, but nobody appeared to remember that circumstance, and I absolutely never could find it. I am absolutely unable to tell you where it is, and I do not know.

"Q. Do you remember about when was the last time you saw it?

"A. No.

"Q. When was this that you went to look for it and could not find it?

"A. I do not know.

"Q. About how many years ago?

"A. Ten years ago, perhaps.

"Q. Where was the book the last time you remembered to have seen it?

"A. That I can not tell you.

"Q. Were you in the employ of the Reading Railroad Company the last time you saw it?

"A. I was in the employ of the Reading Railroad Company.

"Q. Was it in the office that you occupied while serving that company when you last saw it?

"A. I can not say that.

"Q. You say that this arrangement or agreement of 1878 provided for a forfeiture. What was the thing which would occasion a forfeiture?

"A. The thing that would occasion a forfeiture would be a shipment by any one of the interests of a larger proportion of the tonnage than they had agreed to do.

679 "Q. That arrangement of 1878 provided, in effect, that each one of these interests should ship, during each year, a certain percentage of the total?

"A. Should ship during that year a certain percentage of the total shipment of that one year; yes.

"Q. And if it exceeded its percentage, so allotted, it should pay a forfeiture?

"A. Yes, sir.

"Q. Do you know what that forfeiture was?

"A. No.

"Q. Was it so much per ton or was it a gross amount?

"A. I can not tell you. I do not know. I probably knew at the time.

"By Mr. TODD:

"Q. Did I understand you to say that your relations with the railroads ended when you received from them a report of that tonnage and the compensation which they agreed to pay you?

"A. No; we never stopped.

"Q. You did not understand me. I understood you to say, in answer to a question by Mr. Moot—and if I am wrong correct me—that your relation with the railroads, so far as any particular body of tonnage was concerned, ended when that tonnage was reported to you and you received your compensation for the work you did?

"A. As I understand you, yes. It is not quite clear.

"Q. During a series of years, beginning in 1885 or 1886, after you got from the railroads their reports of tonnage, did you not write back to them a note or memorandum showing how much tonnage they had reported, and at the same time what their allotment was under a certain arrangement?

"A. That was done by the report they got. They sent me the reports, and after I had compiled them and put them into form, the form that they understood about and was all right, then that transaction ended, of course. I did not send back to them and

680 tell them there was this much over or that much short or anything of the kind. I simply gave them the information which

they paid me to secure, without any further interest in the matter at all.

"Q. What was the information you gave them?

"A. The report that I prepared every month. That is the only information I ever gave them, unless there would be some simple question about a mistake in a figure or something of that kind.

"Q. You gave back to them the same figures which they gave you?

"A. That is it; I used their figures to make up these totals, and the acknowledgment of receipt, if you please, was simply sending them a statement compiled from those figures. That was all.

"Q. Did you return to them the figures of all the companies, or only their own?

"A. I returned to them the figures of all the companies, for each one all, so that each member of this little group of coal people got his figures from me, those figures being based upon statements of tonnage which they were not willing themselves to give to somebody else.

"Q. But you do not recall having shown in those reports back to the company an artificial figure which was their allotment under a certain arrangement?

"A. I do not know how to answer that exactly. All these totals were made up so as to produce a sum total showing the amounts of each company.

"By Judge MOOT:

"Q. What Mr. Todd wants to know was whether there was any 'president's percentage,' or any per cent. figured out, or anything to show that this company carried more tons than it should for a given month.

"A. There were percentages made out, that is true; but it was made out in exactly the same way as the others. It showed on the face of the statements just exactly what per cent. of the total each had to carry, and if they were over that, the figures showed it.

681 I did not send them a communication telling them they were over or short, but the figures on the statement I gave them showed that. Perhaps that is the answer to your question.

"By Mr. TODD:

"Q. I was speaking of a series of years beginning about 1885 or 1886.

"A. Then that is right.

"Q. You do not recall putting any percentages on there except the percentages which were actually carried?

"A. I can not answer that question without going back to the books.

"Q. You do not recall?

"A. No.

Recross-examination.

"By Judge MOOT:

"Q. Look at your statement here for December, 1885, and December, 1884, on page 689 of this volume, 'Labor troubles in the anthra-

cite regions of Pennsylvania, 1887-1888.' Is that statement, according to your recollection, a correct copy of the statement as you furnished it?

"A. It looks to be.

"Q. Does that contain, according to your present recollection all that your statements as you then furnished them to these companies showed?

"A. Yes. I really can not tell the time when I began to put on the statement—I certainly never did to the public, but these people themselves—to show the result of comparing them with certain figures that the presidents had.

"Q. Down from 1880 to 1885, at least, according to your present recollection, these statements show what you furnished the companies?

"A. Yes.

"Q. You think that after 1885, at some time previous to 1892, you added to these statements a statement to the companies themselves, showing what?

682 "A. No; I guess I must look that up. I can not tell exactly but it may be that I never did; that I used that simply on my own record. When I come to think about it, I guess maybe I never did put that on the companies' records. I simply had that in my own office, from my own information, putting what the percentage was of each company, put that on my own averages, and it got in my mind that I had put them on those, but I think I never did put them on those statements at all. I allowed every company to make up their own figures as to percentages and so forth. I just gave them the facts exactly as they reported them to me.

"Q. In other words, with this tonnage sheet before them, all any president would have to do would be to hand this over to a clerk and ask him to figure out the percentage his company was handling that month?

"A. Yes, sir.

"Q. And then figure out the percentage his company handled the same month a year previous?

"A. Yes, sir.

"Q. And he could make as many or as few deductions, in the same way, as he saw fit, either himself or through a clerk?

"A. Yes, sir.

"Q. Your recollection is now that you did not do that clerical work of figuring out the percentage for them?

"A. Since the question was asked me, it has come to my mind that that is the fact; that I did not put any percentages in the statements I sent out. I did make the percentage statements on my own copies in my own office and that was in my mind when I first attempted to answer the question.

"Q. May we have the examiner put into the record these statements that I have shown you on page 689, as a part of your answer, and as your best recollection of the form in which you actually made out the statements while you were administering the bureau

683 and sending the statements to those various companies?

"A. I have no objection to that."
The statement referred to is as follows:—

ANTHRACITE COAL TONNAGE.

"Statement of Anthracite Coal Tonnage for Month of December, 1885, Compared With Same Period Last Year.

"This statement includes the entire production of anthracite coal, excepting that consumed by employees and for steam heating purposes about the mines.

	December, 1885.		December, 1884.	Difference.	
Philadelphia & Reading R. R.	1,135,716.93	37.90	881,748.10	+ 253,967.13	
Lehigh Valley R. R.	629,056.12	20.99	505,270.13	+ 123,785.19	
Delaware, Lackawanna & Western R. R.	388,944.06	12.98	476,375.12	— 87,431.06	
Delaware & Hudson Canal Co.	318,214.09	10.62	295,174.05	+ 23,040 04	
Pennsylvania R. R.	301,347.10	10.05	242,114.19	+ 59,232.11	
Pennsylvania Coal Co.	145,642.05	4.86	131,018.11	+ 14,623.14	
New York, Lake Erie & Western R. R.	77,903 18	2.60	a137,736.03	— 59,832 05	
Total	2,996,825.03	100.00	2,669,438.13	+ 327,386.10	12 26

	For year 1885.		For year 1884.	Difference.	
Philadelphia & Reading R. R.	11,680,780.06	36.94	11,163,920.01	+ 516,860.05	4.63
Lehigh Valley R. R.	6,107,444.14	19.31	5,935,254.10	+ 172,190.04	2.90
Delaware, Lackawana & Western R. R.	4,987,834.07	15.77	5,204,361.16	— 216,527.09	4.16
Delaware & Hudson Canal Co.	3,301,873.09	10.44	3,362,679.16	— 60,806.07	1.81
Pennsylvania R. R.	3,393,685.01	10.73	3,169,287.03	+ 224,397.18	7.08
Pennsylvania Coal Co.	1,500,685.18	4.75	1,397,945.15	+ 102,740.03	7.35
New York, Lake Erie & Western R. R.	651,226.01	2.06	523,546.08	+ 127,679.13	24.39
Total	31,623,529.16	100.00	a30,756,995.09	+ 866,534.07	2.82

684 "(*a.*) Corrected statement of the tonnage of New York, Lake Erie and Western Railroad for 1884 increases the total production for that year 38,702 tons. In addition, 46,247 tons, which was included in the tonnages of other interests for 1884, is claimed as chargeable to that company.

"The stock of coal on hand at tide-water shipping points, December 31, 1885, was 754,545 tons; on November 30, 670,403 tons; increase 84,142 tons. The amount on hand December 31, 1884, was 874,681 tons.

"Of the total production in 1885, 16,236,470 tons, or 51.34 per cent. was from the Wyoming region; 5,898,634 tons, or 18.65 per cent. from the Lehigh region, and 9,488,426, or 30.01 per cent. from Schuylkill region.

"Eastern competitive tonnage, including all coal which for final

consumption or in transit, reaches any point on Hudson River or the bay of New York, or which passes out of the capes on the Delaware.

	Tons.
1885	11,956,587
1884	12,009,855

JOHN H. JONES, *Accountant.*"

READING COMPANY,
By CHARLES HEEBNER, *Solicitor.*
PHILADELPHIA AND READING RAILWAY COMPANY,
By CHARLES HEEBNER, *Solicitor.*
THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By CHARLES HEEBNER, *Solicitor.*
685 ERIE RAILROAD COMPANY,
By GEO. F. BROWNELL, *Solicitor.*
THE NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
By COLLINS AND CORBIN, *Solicitors.*
THE NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY,
By COLLINS AND CORBIN, *Solicitors.*
THE PENNSYLVANIA COAL COMPANY,
By GEO. F. BROWNELL, *Solicitor.*
HILLSIDE COAL AND IRON COMPANY,
By HERBERT A. TAYLOR, *Solicitor.*
THE TEMPLE IRON COMPANY,
By WILLARD, WARREN AND KNAPP, *Solicitors.*
CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By ROBERT W. DE FOREST, *Solicitor.*
686 THE LEHIGH AND WILKES-BARRE COAL COMPANY,
By ROBERT W. DE FOREST, *Solicitor.*
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
By JOHN L. SEAGER, *Solicitor.*
LEHIGH VALLEY RAILROAD COMPANY,
By JOHN G. JOHNSON, *Solicitor.*
THE LEHIGH VALLEY COAL COMPANY,
By JOHN G. JOHNSON, *Solicitor.*

I certify that the printed signatures of parties and Solicitors are appended pursuant to specific authority therefor to the undersigned.

J. D. CAMPBELL,
Of Counsel.

687 [*Motion to Dismiss Petition. Filed April* 2, 1909.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 127.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded

And now come the defendants, the Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The New York, Susquehanna and Western Coal Company, The Pennsylvania Coal Company and Hillside Coal and Iron Company, and the Clarence Coal Company and separately, severally and jointly move to dismiss the petition herein upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendants is shown in said petition or in the testimony and exhibits filed in support thereof, and especially because both by the pleadings and the evidence adduced it clearly appears that each and every of the transactions alleged and proved as to the said defendants is an isolated transaction, and is a wholly local and domestic transaction wholly performable within the State of Pennsylvania, which did not and does not bear upon or affect or otherwise relate to trade or
688 commerce among the States or with foreign nations and is and was therefore wholly without the jurisdiction of the Congress of the United States.

ERIE RAILROAD COMPANY.
By GEO. F. BROWNELL, *Solicitor.*
THE NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,
By COLLINS AND CORBIN, *Solicitors.*
THE NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY,
By COLLINS AND CORBIN, *Solicitors.*
THE PENNSYLVANIA COAL COMPANY,
By GEO. F. BROWNELL, *Solicitor.*
HILLSIDE COAL AND IRON COMPANY,
By HERBERT A. TAYLOR, *Solicitor.*
THE CLARENCE COAL COMPANY.
By HERBERT A. TAYLOR, *Solicitor.*

689 *Stipulation.*

Filed April 6, 1909.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded, Defendants.

It is hereby stipulated and agreed that the motion to dismiss the petition of the plaintiff in this action, filed by the defendants Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The New York, Susquehanna and Western Coal Company, The Pennsylvania Coal Company and Hillside Coal and Iron Company, may be amended by adding as one of the moving parties, The Clarence Coal Company, already a defendant in this action, without prejudice to the proceedings already had.

J. C. McREYNOLDS,
Solicitor for United States of America.
HERBERT A. TAYLOR,
Solicitor for the Clarence Coal Company.

690 [*Motion to Dismiss Petition. Filed April* 12, 1909.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded, Defendants.

And now comes the defendant, The Elk Hill Coal and Iron Company and moves to dismiss the petition filed herein, upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendant is shown in said petition or in the testimony heretofore taken and the exhibits offered in evidence and filed by the plaintiff in support thereof.

ELK HILL COAL AND IRON COMPANY.
By JAMES E. BURR, *Solicitor.*

[Endorsed:] Filed Apr. 12, 1909. U. S. v. Reading Co. Motion to dismiss by Elk Hill Coal Co.

691 [*Motion to Dismiss Petition. Filed April* 12, 1909.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded, Defendants.

And now comes the defendant, The Price-Pancoast Coal Company and moves to dismiss the petition filed herein, upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendant is shown in said petition or in the testimony heretofore taken and the exhibits offered in evidence and filed by the plaintiff in support thereof.

THE PRICE-PANCOAST COAL COMPANY,
By JAMES E. BURR, *Solicitor.*

[Endorsed:] Filed Apr. 12, 1909. U. S. v. Reading Co. Motion by Price Pancoast Coal Co. to dismiss petition.

692 [*Motion to Dismiss Petition. Filed April* 12, 1909.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded, Defendants.

And now comes the defendant Nay Aug Coal Company and moves to dismiss the petition filed herein, upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendant is shown in said petition or in the testimony heretofore taken and the exhibits offered in evidence therein, and filed by the plaintiff in support thereof.

NAY AUG COAL COMPANY,
By THOS. F. WELLS, *Solicitor.*

693 *Motion to Dismiss, &c.*

Filed April 12, 1909.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded, Defendants.

And now comes the defendant, Pine Hill Coal Company and moves to dismiss the petition filed herein, upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendant is shown in said petition or in the testimony heretofore taken and the exhibits offered in evidence therein, and filed by the plaintiff in support thereof.

PINE HILL COAL COMPANY,
By THOS. F. WELLS, *Solicitor.*

694 [*Motion to Dismiss Petition. Filed Nov.* 18, 1909.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded.

And now comes the defendant, the Temple Iron Company, and moves to dismiss the petition herein upon the ground that the same is multifarious and misjoins parties defendant and causes of complaint, and fails to join necessary parties defendant, and upon the further ground that no cause for proceeding herein against said defendant is shown in said petition or in the testimony and exhibits filed in support thereof, and especially because both by the pleadings and the evidence adduced it clearly appears that each and every of the transactions alleged and proved as to the said defendant is a wholly local and domestic transaction wholly performable within the State of Pennsylvania, which did not and does not bear upon or affect or otherwise relate to trade or commerce among the States or with foreign nations and is and was therefore wholly without the

jurisdiction of the Congress of the United States and the laws enacted thereby.

THE TEMPLE IRON COMPANY,
By WILLARD, WARREN & KNAPP,
Its Solicitors.

EVERETT WARREN,
Of Counsel.

695 *Order Limiting Defendants' Time for Taking Testimony, &c. Filed April* 12, 1909.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

27. Apr. S., 1907.

UNITED STATES
vs.
READING COMPANY et al.

In this cause upon motion of the United States it is ordered by the Court that the defendants shall conclude the taking of evidence in their behalf by the first day of July, 1909. The consideration of all motions of defendants are reserved until final hearing.

G. G.

Entered April 12, 1909.

[Endorsed:] Filed April 12, 1909. U. S. C. C. E. D. of Pa. No. 27. Apr. S. 1907. U. S. v. Reading Co. et al. Order limiting defendants' time for taking testimony.

696 *Order Fixing Time for Filing Briefs, etc. Filed December* 6, 1909.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Before George Gray, J.

Ordered that the hearing in this case take place on February 21, 1910, at 10 A. M. Further ordered that complainant file its Brief on or before January 18, 1910. Defendants to file their briefs on or

before February 15, 1910 and it is further ordered that complainant have five days thereafter to file its Reply Brief.

By the Court.

Attest:

GEORGE BRODBECK,
Deputy Clerk.

697 [*Motion to Suppress Testimony. Filed February* 16, 1910.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Impleaded.

And now come the defendants, the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company, and separately, severally and jointly object to and move to strike out of the testimony heretofore taken herein in behalf of the plaintiff, and other defendants than the above-named, and to suppress therefrom the several statements and exhibits hereinafter specified upon the ground that the same are irrelevant, immaterial and incompetent, and upon the further grounds upon which the same were objected to when offered in evidence as hereinafter specified, objections to the immateriality or irrelevancy of all evidence having been reserved to the defendants by the stipulation of counsel at the beginning of the hearing hereon, as appears by such stipulation upon page 6 of the printed record. The several statements and exhibits objected to and specified to be struck out and suppressed, with references to the Printed Record by volume and page, are as follows, to-wit:

1. All testimony relating to alleged Board of Control of 1876.

698 2. That part of the testimony of W. R. Taylor (V. II. pp. 340 to 343), beginning with the words, "Q. Mr. Franklin B. Gowen was the President of The Philadelphia and Reading Railroad Company in February, 1876." and ending with the words, "None of them are living."

3. Government Exhibit No. 152. (V. III, pp. 315 to 318).

4. All testimony relating to the alleged proceedings and meetings in the years 1884 to 1887.

5. That part of the testimony of J. S. Harris (V. II, pp. 259 and 260), beginning with the words, "When you were on the stand before you were asked concerning testimony which you gave back in the year 1886." and ending with the words, "So that all you can now say is that you were sworn, that some stenographer was present, and that you did give the facts in your testimony as correctly as you

understood them, whether it was correctly reported or not? A. Yes, sir."

6. Government Exhibit No. 145 (V. III, pp. 239 to 298).

7. All testimony in the record relating to the Leases in 1892 of the Central Railroad Company of New Jersey to the Port Reading Railroad Company and of the Lehigh Valley Railroad Company to the Philadelphia and Reading Railroad Company.

8. That part of the testimony of W. R. Taylor (V. II, p. 340), beginning with the words, "Q. You were secretary of The Philadelphia and Reading Railroad Company in February, 1892," and ending with the words, "If such a statement was made, it was made by the president on his own responsibility."

9. Strike out and suppress (*a*) Extract from the report of the Philadelphia and Reading *Railroad* Company for the year ending November 30, 1890, (V. II, pp. 562 to 564); (*b*) for the year
699 ending November 30, 1891, (V. II, pp. 564 and 565); (*c*) for the year ending November 30, 1893, (V. II, p. 565 and 566); (*d*) (for the year ending November 30, 1895, (V. II, p. 566); (*e*) for the year ending November 30, 1891, (V. II, p. 712); (*f*) for the year ending November 30, 1893, (V. II, pp. 712 and 713); (*g*) for the year ending November 30, 1894, (V. II, p. 713); (*h*) for the year ending November 30, 1895 (V. II, pp. 713 and 714).

10. All testimony in the record relating to the acquisition by the Erie Railroad Company of a majority of the shares of the New York, Susquehanna & Western Railroad Company, and relating to the matters and issues referred to in paragraph VII (*b*) of the petition.

11. All testimony relating to the acquisition of the Pennsylvania Coal Company by the Erie Railroad Company and relating to the matters and issues referred to in paragraph VII (*e*) of the petition.

12. That part of the testimony of G. A. Richardson (V. II, p. 135), as follows: "Q. From exhibits furnished us it appears that the Erie Railroad Company owns all the shares in the Pennsylvania Coal Company except $22,500. Do you know where the actual ownership of these shares is? A. The Erie is the owner of practically all of the stock with the exception of the very few shares. Q. Those shares have been put in the names of different parties to make up the board of directors? A. Yes."

13. That part of the testimony of M. P. Blauvelt (V. II, p. 182), beginning with the words, "How long have you been connected with the Pennsylvania Coal Company," and ending with the words, "I don't think as a straight declaration of dividend."

14. The following parts of the testimony of G. M. Cumming:

700 (*a*) (V. II, p. 357), Beginning with the words, "Q. Were you vice-president," and ending with the words, "Your connection with the Coal Companies was during the period when you were the vice-president of the Erie Railroad Company? A. Yes, sir";

(*b*) (V. II, pp. 360 to 362), Beginning with the words, "Q. Was it at that time in competition with the Erie Railroad for the transportation of coals," and ending with the words, "Q. Was it the Susquehanna connecting railroad? A. Something like that";

(*c*) (V. II, pp. 363 to 365), Beginning with the words, "Q. What was the relationship in 1897, 1898 and 1899 between the Erie & Wyoming Valley Railroad Company and the Erie Railroad Company," and ending with the words, "It was abandoned after the acquisition of the Pennsylvania Company by the Erie Railroad Company";

(*d*) (V. II, pp. 388 and 389), Beginning with the words, "Q. Do you know enough about the traffic conditions of the New York, Susquehanna & Western and the Erie Railroad Company, so that you can tell us whether they were active competitors for traffic in Paterson?" and ending with the words, "Was there any other railway reaching Paterson aside from the Erie Railroad and the New York, Susquehanna & Western Railroad? A. No; I think not";

(*e*) (V. 11, pp. 389 to 392), Beginning with the words, "As to the purchase of the Pennsylvania Coal Company," and ending with the words, "That it was profitable, and would prove profitable";

(*f*) (V. II, pp. 395 to 397), Beginning with the words, "Q. The plan, as I understand you, was that the Delaware Valley and Kingston Railroad Company was to connect with this Erie and Wyoming Valley Railroad Company at Hawley," and ending with the words, "It is easy enough to prove that matter";

701 (*g*) (V. II, p. 398), Beginning with the words, "You were asked something about the competition between the Erie Railroad Company and The New York, Susquehanna & Western Railroad Company," and ending with the words, "aside from the coal business";

(*h*) (V. II, p. 400 and 401) Beginning with words, "Q. In that sense, the New York, Susquehanna & Western was a competitor of the Erie Railroad," and ending with the words, "That would be a proper conclusion, if my first statement is correct."

15. All of the testimony of Martin P. Plauvelt, appearing in V. II, pp. 425 to 437.

16. All of the testimony of David Bosman, (V. II, pp. 487 to 490).

17. Government Exhibits Nos. 153, 154 and 155, (V. III, pp. 319 to 325).

18. Erie Railroad Company Exhibit No. 42, (V. VI, pp. 593 to 604).

19. All of the testimony of Martin P. Blauvelt, (V. II, pp. 646 to 649).

20. All of the testimony of A. Z. Ryerson, (V. IV, pp. 3 to 15).

21. All of the testimony of J. L. Guyre, (V. IV, pp. 15 to 32).

22. All of the testimony of M. E. Johns, (V. IV, pp. 32 to 214) and (V. IV, pp. 357 to 364).

23. All of the testimony of F. E. Smith, (V. IV, pp. 216 to 254).

24. All testimony in the record relating to the acquisition by the Reading Company of a majority of the shares of the Central Railroad of New Jersey and relating to the matters and issues referred to in paragraph VII (*c*) of the petition.

25. Extract from the report of the Central Railroad of New Jersey for the year ending December 31, 1891, (V. II, p. 568 and 569).

702 26. That part of the testimony of William R. Taylor, (V. II, p. 196), beginning with the words, "You were connected," etc., and ending with the words, "It was introduced in evidence, marked Government Exhibit No. 142."

27. Government Exhibit No. 142 (V. III, p. 224), entitled "Agreement between the Lehigh & Wilkes-Barre Coal Company and the Philadelphia & Reading Coal & Iron Company, dated April 30, 1892."

28. That part of the testimony of J. S. Harris, (V. II, pp. 34 to 39), beginning with the words, "Were you president of the Reading Company when it acquired a majority of the capital stock of The Central Railroad Company of New Jersey? A. Yes, sir," and ending with the words, "Q. Have you been a director of The Central Railroad Company of New Jersey ever since the majority interest was acquired by the Reading Company? A. Yes. But I do not think I attended the annual meetings."

29. That part of the testimony of R. W. De Forest (V. II, p. 185 and 186), beginning with the words, "Mr. De Forest, counsel for The Central Railroad of New Jersey and other defendants, makes the following statements," and ending with the words, "the delivery of orders by the trustee, etc."

30. Government Exhibit No. 141 (V. III, pp. 221 to 223), entitled "Jersey Central Collateral Trust Deed of Reading Company."

31. Government Exhibit No. 190, being the answer of the Central Railroad Company of New Jersey in the suit of Stockton, Attorney General, against Central Railroad Company of New Jersey, in the Court of Chancery of New Jersey, (V. III, pp. 462 to 479).

32. Testimony of Robert W. De Forest, on the same subject, (V. II, p. 653).

703 33. Testimony of Robert W. De Forest on the same subject, (V. II, pp. 654 to 686), beginning with the words, "In this case of the State of New Jersey," and continuing through to and including the words, "Same stipulation filed in 85-89-91-95-97," including all documents printed on said pages.

34. Extract from the Fourth Annual Report of the Reading Company for the year ended June 30, 1901, (V. II, p. 567).

35. That part of the "Statement concerning Reading Companies" contained in Paragraph XI thereof, (V. IV, pp. 537 to 542).

36. That part of the testimony of William Griffith (V. II, pp. 532 to 536), beginning with the words, "Q. You once made, did you not, an estimate of the amount of anthracite coal in the ground which could be shipped out, and the proportions of that held or controlled by each of what are known as the large interests," and ending with the words, "Q. So this tabulated statement is made up to the 1st day of January, 1896? A. Yes, sir; it includes the year 1895."

37. Government Exhibit No. 157, (V. III, p. 328 and 329).

LEHIGH VALLEY RAILROAD COMPANY,
LEHIGH VALLEY COAL COMPANY,
By FRANK H. PLATT,
J. F. SCHAPERKOTTER,
G. W. FIELD, *Counsel.*

704 [*Opinions. Filed Dec.* 8, 1910.]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Before Gray, Buffington, and Lanning, Circuit Judges.

GRAY, *Circuit Judge:*

The proceedings in this case were begun by a petition in the nature of a bill in equity, filed June 12th, 1907, on behalf of the United States, under Section 4 of the Act of Congress of July 2nd, 1890, commonly known as the "Anti-Trust Act," against the defendants named in the caption. The petition invokes the juris-
705 diction of this court to prevent and restrain the alleged violation by the defendants of Sections 1 and 2 of said Act of Congress. The defendants are all alleged to be corporations duly created under the laws of the states of Pennsylvania, New York and New Jersey, respectively.

In its first paragraph, the petition alleges that the defendants, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, The Delaware, Lackawanna & Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, and The New York, Susquehanna and Western Railroad Company, (called the defendant carriers when referred to collectively), are common carriers engaged in interstate transportation, particularly in the transportation of anthracite coal from the mines of Pennsylvania to the markets of that and other states. It alleges that the defendants, The Philadelphia & Reading Coal and Iron Company, The Lehigh Valley Coal Company, The Lehigh & Wilkes-Barre Coal Company, The Pennsylvania Coal Company, the Hillside Coal & Iron Company, and The New York, Susquehanna & Western Coal Company (called the defendant coal companies), own and operate anthracite coal mines in the state of Pennsylvania, and "buy, sell, and otherwise deal in anthracite coal in the markets of the several states"; that the defendant, The Temple Iron Company, also owns and operates anthracite mines in the state of Pennsylvania; that the defendant, The Reading Company, is the holding corporation of the Reading System, and holds the entire capital stock of the Philadelphia & Reading Railway Company and of the Philadelphia & Reading Coal and Iron Company, and a majority in interest of the capital stock of the Central Railroad Company of New Jersey.

706 In its second paragraph, it is alleged that, save the Pennsylvania Railroad Company and the New York, Ontario & Western Railroad Company, and the line of the Delaware & Hudson

Company, the defendant carriers operate the only lines of railroad that penetrate the anthracite coal regions, and, with the exception stated, furnish and control the only means of transporting anthracite coal from the mines in Pennsylvania to the markets and distributing points in that and other states, particularly the great markets and distributing points at tide water in the vicinity of New York.

The third paragraph of the petition alleges that The Reading Company, the holding corporation of the Reading System, which holds the entire capital stock of the Philadelphia & Reading Railway Company, also holds the entire capital stock of the Philadelphia & Reading Coal & Iron Company; the Lehigh Valley Railroad Company owns all the capital stock of the Lehigh Valley Coal Company; The Central Railroad Company of New Jersey owns nine-tenths of the capital stock of the Lehigh & Wilkes-Barre Coal Company; the Erie Railroad Company owns all the capital stock of the Pennsylvania Coal Company and a large majority of the capital stock of the Hillside Coal & Iron Company; and The New York, Susquehanna & Western Railroad Company owns nearly all of the capital stock of The New York, Susquehanna & Western Coal Company; and that these so-called "subsidiary" coal mining companies (the defendant coal companies herein) are controlled by or in the interest of the defendant carriers, or some of them, through the ownership of controlling stock interests.

707 The fourth paragraph of the petition, after stating that anthracite coal is an article of prime necessity and universally used for domestic purposes throughout New England and the Middle Atlantic States, and that the source of the entire supply, save a few small deposits of inferior quality, is located in the state of Pennsylvania, in an area of about 484 square miles, divided for trade purposes into three regions, viz., the northern or Wyoming (sometimes called the Lackawanna) region, the middle or Lehigh region, and the southern or Schuylkill region, alleges that the defendant carriers and The Reading Company, either directly or through the said defendant coal companies, own or control 90 per cent., approximately, of the entire unmined area of anthracite, distributed substantially in the following proportions, to wit:

	Per cent.
Reading Company	44.00
Lehigh Valley Railroad Company	16.87
Delaware, Lackawanna & Western Railroad Co.	6.55
Central Railroad Company of New Jersey	19.00
Erie Railroad Company	2.59
New York, Susquehanna & Western Railroad Co.	.54
	89.55

and that they produce, either directly or through the agency of these coal companies, from 70 to 75 per cent. approximately, of the annual supply of anthracite. There are, however, it is alleged, a large number of independent individual firms and corporations who mine an-

thracite, either from their own properties or from properties leased by them, and who would be free from the control of the defendant carriers, were it not for the unlawful contracts hereinafter
708 referred to; that these independent operators produce, approximately, from 20 to 25 per cent. of the annual supply of anthracite (the residue being produced by the anthracite carriers not parties hereto), which would come in competition in the great distributing centers with the anthracite produced by the defendant carriers, or their so-called agencies, the defendant coal companies, were it not for the unlawful contracts, combinations and conspiracies thereinafter charged and set forth, which stifle competition between the several defendant carriers, or their so-called agencies, in the sale of anthracite coal throughout the several states, and between such defendant carriers, or their so-called agencies, and the aforesaid independent operators.

Paragraph 5 alleges that that part of the anthracite output not consumed in the state of Pennsylvania, is carried chiefly to tide water at New York Harbor, and is thence distributed by water and by railroad to points in the New England and Middle Atlantic States; that New York Harbor is the principal distributing point for anthracite coal, and that the price in that market fixes or regulates its price in the markets of the several states which get their supply through New York Harbor points.

Paragraph 6 sets forth the attempted lease, in January, 1892, by the Lehigh Valley Railroad Company and by the Central Railroad Company of New Jersey, as lessors, of their respective railroads and coal properties, to the Philadelphia & Reading Railroad Company, predecessor of the present defendant, as lessee, for the period of 999 years; and that by the decree of the Chancellor of the state of New Jersey, said lease of the properties of the Central Railroad Company was adjudged to be null and void, and that, in consequence
709 thereof, the lease between the Philadelphia & Reading Railroad Company and the Lehigh Valley Railroad Company was rescinded.

The gist of the petition and its charging part are set forth in the 7th paragraph thereof. Its general charge of combination and conspiracy is thus set forth:

"The average price of anthracite coal at tide water, taking for illustration the stove size, which rose from $3.71 and $3.85 a ton in 1890 and 1891, respectively, prior to the leases just described, to $4.15 and $4.19 a ton in 1892 and 1893 respectively, the years during which the said leases were in force, again declined, under the influence of competition, in the years immediately following the cancellation of the leases, falling to $3.60 a ton in 1894 and $3.12 a ton in 1895. Whereupon, in violation of the provisions of sections 1 and 2, respectively, of an Act of Congress, approved July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 Stats., 209), the defendant The Reading Company, and the defendant carriers and the defendant coal companies, owning or controlling 90 per cent, more or less, of the anthracite deposits, and producing 75 per cent., more or less, of the

annual anthracite supply, and controlling all the means of transportation between the anthracite mines and tide water, save the railroads operated by the Pennsylvania Railroad Company and the New York, Ontario & Western Railway Company, which, as aforesaid, reach only a limited number of collieries, entered into an agreement, scheme, combination, or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain, and monopolize, and have controlled, regulated, restrained and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other states and its price and sale throughout the several States, with the result that competition
710 in the transportation and sale of anthracite coal has been wholly suppressed, and the price thereof to consumers greatly enhanced. As steps in the development of this illegal combination, and in furtherance of its illegal purposes, the defendants herein named, or some of them, engaged in and became parties to the following additional acts, schemes and contracts, among others, in violation of the aforesaid Act of July 2nd, 1890:" &c.

These "additional acts, schemes and contracts," alleged to be steps in the development of this illegal combination, in violation of the Act, are then set forth in said paragraph. They are four in number, and are referred to as (*a*) the 65 per cent. contracts, (*b*) the absorption by the Erie Railroad Company of the New York, Susquehanna & Western Railroad Company, (*c*) the acquisition by The Reading Company of the majority of the shares of the Central Railroad Company of New Jersey, (*d*) The Temple Iron Company transaction, and (*e*) the acquisition by the Erie Railroad Company, while controlling the Hillside Coal & Iron Company, of all the shares of the Delaware Valley & Kingston Railroad Company, a projected competing carrier, and all the shares of the Pennsylvania Coal Company, a competing producer.

All the above named defendants, both carrier and coal companies, have filed their answers to the petition, and the Hillside Coal & Iron Company demurred generally for want of equity, and specially for multifariousness. These answers are several and separate, and each of them denies any participation in any combination or conspiracy, as charged against all the defendants in the seventh paragraph of the petition, and all knowledge or information in regard to the same. The separate acts charged against various groups of the defendants, as steps towards the alleged general conspiracy, and as inde-
711 pendently unlawful, are also denied by those defendants, respectively, against whom the charge is made.

After the filing of the answers, the petitioner, by leave of the court, amended its original petition, by adding as defendants therein a large number of independent coal producers, operators and mine owners, as being parties to the so-called 65 per cent. contracts with all or some of the original defendants.

Issue having been joined by replication duly filed by the petitioners, evidence was taken at great length on behalf of both the Government and the defendants, and the case is now before us on final hearing.

The provisions of the Act of Congress, of July 2nd, 1890, with which we are here concerned, are contained in Sections 1, 2, and 4 of said Act, and are as follows:

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 2. Every person who shall monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * * * *

712 "SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

The theory of the Government's case, as stated by the learned and able counsel who represented it, is that all the original defendants have long been parties to a general combination and conspiracy which stifles competition and obstructs trade and commerce among the states in anthracite coal, to which the separate acts charged against various groups of the same defendants are referable as steps towards the common goal; and further, that these separate acts of the various groups are independently in violation of the Act of Congress, and, contributing as they do to the same end, that all the defendants, parties to some of them, would properly be embraced in one petition, though there were no general combination or conspiracy to which each might be referred.

Counsel for the petitioner have dwelt at great length upon the somewhat peculiar conditions now and for a long time past obtaining in the production and transportation of coal in the an-
713 thracite region of Pennsylvania, and counsel for the defendants have referred to the history, as shown by the evidence, of the development of coal production and transportation in that region, and the necessary and fostering care exercised by the state in

promoting that development. This development has necessarily been influenced by the peculiar natural features, topographical and geographical, which characterize the anthracite region, and it is doubtless true that the present situation of trade and traffic in anthracite coal is largely the outgrowth of these antecedent conditions.

The knowledge of the availability of anthracite coal as a fuel for domestic and industrial purposes antedating as it did the railroad era, was not utilized for want of transportation facilities, and after the beginning of that era, for the want of capital for the building of railroads and the mining and preparation of the coal for use. The requirement of such capital was enhanced by the fact that the production of anthracite coal differed from that of bituminous coal, in that the former, after it was mined, required to be broken up before it was marketed into assorted sizes, by means of expensive machinery called "breakers."

The transportation of anthracite coal to the more distant markets of Pennsylvania and adjoining states, was at first accomplished by the construction of canals by those owning the coal properties. The public policy of the state of Pennsylvania, for obvious reasons, favored such construction. This public policy also extended to the construction of railroads from convenient shipping points to different parts of the anthracite region. This policy is exemplified by the Acts of Assembly of the state of Pennsylvania, between the years 1823 and 1871, which expressly conferred upon the Delaware & Hudson Company the same authority which was conferred upon it
714 in its act of incorporation in the State of New York, April 23rd, 1823, "to construct a canal or water navigation from the anthracite coal district in Pennsylvania to the Hudson River in New York, to purchase lands in Pennsylvania containing stone or anthracite coal; and to employ its capital in the business of transporting to market coal mined from such lands." This authority was afterwards extended to the construction and acquisition of railroads for the same general purpose of transporting coal from the coal lands owned by said company. The same is in general true of the other defendant carriers. Under and in deference to the same general policy, the roads of the other defendant carriers were constructed, either by the present corporations or their predecessors in title, as also were established the defendant coal companies which grew up under the auspices of ownership of the defendant carriers, respectively, each coal company producing or marketing the coal over the railroad to which the mines from which it was produced were contiguous or naturally tributary. These coal companies were organized from time to time under Acts of Assembly of the State of Pennsylvania, with authority to mine and sell coal and to acquire coal lands for that purpose. Moreover, by an Act of Assembly of the State of Pennsylvania, approved April 15th, 1869, entitled "An Act to authorize railroad and canal companies to aid in the development of the coal, iron, lumber and other material interests of this commonwealth," such railroad and canal companies were authorized to aid corporations engaged in developing coal, iron, lumber, and other

material interests of Pennsylvania, by the purchase of their capital stock and bonds, or either of them.

The anthracite coal deposits of Pennsylvania are found in
715 three quite distinct and separate fields or regions,—the upper, or Wyoming, region extending in a northeast and southwest direction, and of comparatively narrow width, for a distance of 50 or 60 miles, partly on both sides of the Susquehanna River as it runs from the northeast to the southwest, containing 176 square miles in Lackawanna and Luzerne Counties; the middle or Lehigh region containing 127 square miles in Luzerne, Schuylkill, Columbia and Northumberland Counties; and the southern or Schuylkill region, in Schuylkill, Dauphin and Carbon Counties, containing 181 square miles. Scranton and Wilkes-Barre are the principal towns of the Wyoming region, Hazleton of the Lehigh region, and Pottsville of the Schuylkill region. In each of these regions, there are many collieries and plants for preparing coal, including those owned and operated by the defendant coal companies or carriers, as well as by so-called independent coal companies and operators. Into each of them run one or more of the defendant carrier companies, which, with some other companies not defendants, collect and carry the coal adjacent to their lines, respectively, by means of the spurs and branches constructed from such lines to the various mines and collieries. Naturally, each railroad line carries the coal from that part of the coal region adjacent to it or conveniently reached by its spurs and branches.

From one of the tables filed as a Government exhibit, we take the following statement of the shipments of anthracite coal carried by the defendant railway companies, and two others, as initial transportation lines during 1907, and the proportionate percentage of the whole carried by each:

716 Railroad.	Gross Tons.	Per cent.
Phila. & Reading Ry	14,018,795	20.89
Lehigh Valley Railroad	11,532,255	17.18
Central R. R. of New Jersey	8,714,113	12.99
Del., Lackawanna & West. R. R.	10,237,419	15.25
Delaware & Hudson Company	6,562,768	9.78
Pennsylvania Railroad	6,203,271	9.24
Erie Railroad	7,151,683	10.66
New York, Ontario & West. Ry.	2,689,089	4.01
	67,109,393	100.00

It appears from the exhibits and testimony produced by the petitioner, that approximately 12 per cent of the total production of coal in the anthracite region is not shipped away, but is consumed at local points and in the operation of the mines, and that, taking the year 1905 as a normal year, it would appear that, of the coal that was shipped away from the mines, about 25 per cent. was carried to tide water points in New York Harbor, and of the balance, about 20 per cent. was consumed within the state of Pennsylvania and 55 per cent

shipped to points outside the state, other than those at tide water in New York Harbor.

As averred in the petition, and as appears in the agreed statement of facts, the distribution of coal lands among the principal holders at the time of filing the petition was as follows:

Names of holders.	Area possessed, acres.
The Del., Lackawanna & West. R. R. Co.	17,353
The Delaware & Hudson Co. and subsidiaries	25,180
Hillside Coal and Iron Company	13,466
The Pennsylvania Coal Company	13,900
The New York, Susquehanna & West. Coal Co.	963
717 Scranton Coal Company	2,695
Elk Hill Coal and Iron Company	3,049
Lehigh & Wilkes-Barre Coal Company	15,650
The Temple Iron Company and subsidiaries	4,465
Susquehanna Coal Co. and affiliated companies	16,867
Lehigh Valley Coal Company	37,047
Coxe Bros. & Company, Inc.	5,311
Philadelphia & Reading Coal and Iron Co.	98,077
Lehigh Coal & Navigation Company	13,783
Total	267,806
Total Coal Area (484 square miles)	309,760

Of these, the Delaware and Hudson Company and its subsidiaries, the Scranton Coal Company, the Elk Hill Coal and Iron Company, the Susquehanna Coal Company, and affiliated companies, and the Lehigh Coal and Navigation Company, whose ownership aggregates 61,574 acres, are not defendants in this proceeding, as participants in the general combination or conspiracy charged by the petition against the original defendants therein named. This would leave about two-thirds in area of the coal lands of the anthracite region in the ownership or possession by lease, or otherwise, of the defendant companies. As appears from the undisputed testimony of the defendants, these present holdings of coal lands have resulted from acquisitions made through a long period of years by the companies named respectively, or their predecessors in title, beginning, in the case of some of the largest holders and in respect to the larger part of the acquisition, long prior to 1874. The gradual growth of these acquisitions and the consequent development of the present situation, it is contended by the defendants, have been induced by natural
718 causes, such as the geographical and topographical features of the anthracite coal region, which have presented serious obstacles to the construction of railroads with which it was sought to penetrate the different coal fields of the anthracite region, and which have enhanced enormously the cost of their construction; that in the earlier periods of the development of this region, when the mines and the production of coal were more largely in the hands of individuals and small corporations, the business of mining and market-

ing coal was wasteful and often resulted largely in the failure or bankruptcy of those concerned therein. The individual exploiter skimmed the cream, so to speak, of his coal lands, and, unable to meet the expense of practicing the economies necessary to their full development, the mines were not infrequently abandoned, and of this abandonment, deterioration or ruin was the natural result. That, latterly, the recurrence of strikes and labor troubles have contributed to the difficulties of the situation. That these strikes and labor troubles extended to all the coal mining and coal shipping operations of the whole region, affecting all producers, great and small alike, and that the solidarity of the labor unions compelled a joint agreement, embracing all engaged in mining operations, as to the terms of settlement. That since the last settlement in 1902-3, there has resulted a condition of comparative industrial peace in the anthracite region. That this condition, together with the increased demand for and the consequent increased price of coal have regulated, without destroying, the natural competition of the great carrying and producing companies. That many economies in the production and sale of coal have been made possible, wasteful production largely done away with, and, more than all, a wise and scientific conserva-
719 tion of the future supply of this necessity of modern life has been brought about, to the infinite advantage of the public and of those connected with the production of coal, whether as capitalists or laborers.

It is further urged by the defendants, that the destruction of present conditions and methods attending the production and sale of coal, will produce a deplorable anarchy in the trade, and involve in confusion and financial loss all those engaged therein, a confusion and loss by which the consumer is bound to suffer.

This may all be admitted. Counsel for the petitioner, indeed, do not undertake to deny, as it is unnecessary that they should, any of these statements. They are only pertinent as challenging by their importance the careful consideration by the court of the issues involved in the case before us.

The general situation being as thus briefly indicated, the defendant railway carriers and defendant coal companies are charged by the petition, as above stated, with having, in violation of the provisions of Sections 1 and 2 of the Act of Congress, approved July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," at a time not definitely stated, but presumably shortly after the year 1895, "entered into an agreement, scheme, combination or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain and monopolize, and have controlled, regulated, restrained and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other states, and its price and sale throughout the several states, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly
720 enhanced." For specific details of time, place and circumstance of this somewhat vague and indefinite charge, we must

of course look to the evidence adduced by the petitioner. In saying that the time fixed for the entering into the combination and conspiracy charged, is presumably shortly after 1895, reference is made to the statements of the petition introductory to the charge above quoted. These statements having set forth the attempted lease, in 1892, by which the Philadelphia and Reading Railroad Company, as lessee, was to take over the railroad and coal properties of the Lehigh Valley Railroad Company and of the Central Railroad Company of New Jersey, the lessors, for a period of 999 years, and that the same was set aside by a decree of the Chancellor of the state of New Jersey, in 1893, at the suit of its Attorney General, adjudging the same to be null and void, the petition avers that the price of stove size of anthracite coal at tide water, which rose from $3.71 and $3.85 a ton in 1890 and 1891 respectively, prior to the leases just described, to $4.15 and $4.19 a ton in 1892 and 1893, respectively, and again declined in the years immediately following the cancellation of the leases to $3.60 a ton in 1894 and $3.12 a ton in 1895. "Whereupon," the petition charges that the defendants entered into the combination and conspiracy as above recited. The conclusion is thus sought to be drawn by the petitioner, that the motive of the combination and conspiracy about to be charged was the fall in the price of stove coal that occurred in 1895, and that the time at which it was entered into was shortly thereafter.

Accordingly, as being direct evidence of the general conspiracy charged, we are referred to the testimony touching what is alleged to be an express agreement or arrangement entered into be-
721 tween the Presidents of the defendant carriers, on January 23rd, 1896, and spoken of as "The Presidents' Percentages."

Joseph A. Harris, one of the first witnesses produced on behalf of the petitioner, was President of the Philadelphia and Reading Railroad Company from 1893 to 1895, when he became one of the Receivers appointed by this court of the said railroad, and of the Coal and Iron Company, and after the reorganization in 1897, President again of the Reading Railroad Company, The Reading Company, and the Reading Coal and Iron Company, until 1901, when he retired. He was called to testify, and was questioned at great length as to certain alleged agreements between the defendant carriers and coal companies in 1876, 1884, 1885 and 1886, by which the coal tonnage of the different roads was to be apportioned among the several roads and restricted to certain percentages of the whole. To repeated questions, he answered that he had no recollection at all in regard to such agreements ever having existed. He was then questioned as to certain testimony given by him in a suit by the State of Pennsylvania against certain of these companies in 1886, as to all of which he replied that he had no recollection of having given the testimony referred to, and when read to him, that it did not refresh his memory. The same course was pursued in regard to the proceeding before the Interstate Commerce Commission, in which he is said to have testified with the same result. This course of questioning was pursued, and to reiterated leading questions, he repeatedly declared that he had no recollection and did not believe that any such agreements

between the defendant companies as he was being interrogated about had ever existed. The examination then continues as follows:

722 "Q. Coming now to the year 1896, while you were President of the Philadelphia and Reading Railroad Company, give us the substance of the agreement between the Presidents of the anthracite coal roads entered into at that time, establishing what were thereafter commonly called 'Presidents' percentages.'

A. I do not know anything about it.

Q. Have you never heard of the 'Presidents' percentages'?

A. I have never heard of the 'Presidents' percentages.' I never heard the term.

Q. What was the agreement entered into by the Presidents of the railroads in 1896, in reference to allotting to each interest a certain percentage of the total output of coal?

A. I do not know. I do not remember that there was any agreement at all. Have you anything there to refresh my memory?

Q. In 1896, was there not a meeting of the Presidents of the coal carrying roads, in which the question of the allotment of tonnage was discussed?

A. That I do not remember at all.

Q. Do you remember no discussion in reference to that matter between the Presidents of the various coal carrying roads?

A. No; if you will give me the papers, I will look over them and tell you.

Q. This is your testimony which was taken in the investigation before the Interstate Commerce Commission, (referring to testimony).

A. I no doubt gave my testimony correctly then.

Q. You were asked: 'You do recollect, do you not, that there was a time when that matter' (referring to the distribution of tonnage among the coal carrying roads) 'came up for discussion among the Presidents of the coal carrying roads?' and you replied, 'What question came up? Q. The question of the division of the busi-

723 ness of carrying coal—the question of the division of the anthracite coal into certain percentages?' you saying 'Understanding as to what share of the business each road was legally entitled to? Q. Yes, if that makes it clearer,' and then you answered that, 'Yes.'

Judge CAMPBELL: I think the witness's attention should be called to the whole of his examination and cross-examination, because he may have, and probably did on further recollection or refreshment of his memory, made a very material change in the substance of his testimony.

By Mr. MCREYNOLDS:

Q. Have you any recollection of those meetings at all?

A. I have no recollection of them at all; no. If I were to see these minutes or to read them, I might remember them. I have no doubt that what I testified to there was true. That is all I can say.

Q. From 1896 down to the time when you left the Reading Railroad Company, was there not a general understanding between

you and the various Presidents of the coal carrying roads, as to what percentage each one should be entitled to?

A. There was not a general understanding, because it was the subject of a great deal of contest. I do not believe, so far as my recollection goes, that there was ever any agreement made at all.

Q. Please read this testimony that you gave before the Interstate Commerce Commission in 1903, commencing on page 1570, for three or four pages, and see if it refreshes your recollection on that subject.

A. (After reading testimony.) I notice I said then, as I say now, that it was too far away for me to recollect any of the details of that meeting. It has been long years since, and my memory has not been refreshed. I think this testimony of mine, from page 1572 to page 1575, is all correct.

724 Q. Having read that, do you remember that there was a meeting in the year 1896?

A. I only remember it by these papers.

Q. Having refreshed your recollection about that, do you not remember that there was a meeting in the year 1896 of the Presidents of the anthracite coal carrying roads, at which they came to a general understanding about the amount of the proportion of the total output which should be allotted to each?

A. Yes.

Q. What was the percentage at that time allotted to the Philadelphia and Reading interest?

A. Twenty and a half, it appears from this testimony.

Q. And each of the other roads had some percentage of a similar character allotted to them?

A. Yes; I say here in this testimony, 'there was never any binding agreement'—I thought there was not—'as can best be shown by the statistics at that time. There never was a year when that understanding was kept or nearly kept, and as a general statement of what would be fair and reasonable, there was never a single year when there was an approach to it.' There is a general statement, and that is correct.

Q. There was, however, a general understanding among the parties, that they should each endeavor to produce a given percentage which was allotted?

A. Yes, sir."

(See Record, Vol. II, pp. 25-26.)

Mr. Harris is a gentleman highly respected in the community in which he lives, but the activities of his useful life have long since ceased. He is pressed again and again with questions, the answers to which only disclose a want of recollection as to the matters suggested therein. His testimony, as quoted above, in regard
725 to the so-called "Presidents' percentages", falls short of supporting the general conspiracy charged in the petition, not only on account of the manifest infirmity of the witness's memory, but also on account of the substance of the testimony itself.

A copy of the testimony of one Alfred Walter, who at one time

was President of the Lehigh Valley Railroad Company, given in a proceeding against some of these same defendants before the Interstate Commerce Commission, begun in 1902 on the petition of William R. Hearst, and certified before the Secretary of said Commission, has been introduced into this case by the petitioner. Mr. Walter's deposition is an exceedingly long one. That part of it to which we are especially referred by counsel for the petitioner, is as follows: (See Government Exhibit No. 159, Vol. III Record, p. 377.)

"Mr. SHEARN: Have you not stated and is it not a fact, Mr. Walter, that the Lehigh Valley Coal Company during your administration did not produce and sell to tide water as much coal as it was capable of producing and marketing?

Mr. WALTER: I do not think I said anything like that.

Mr. SHEARN: Well, you used to receive Ruley's report, did you not?

Mr. WALTER: Yes.

Mr. SHEARN: And you used to see on those reports the heading, 'tonnage based on the presidents' percentages,' did you not?

Mr. WALTER: Yes.

Mr. SHEARN: What did that mean to you?

Mr. WALTER: That meant the question of the shipping of coal and not the sale of coal. You have the two mixed.

Mr. SHEARN: Changing the form of the question, then, was there during this period an understood arrangement between the Presidents of the different companies as to the proportion of
726 anthracite tonnage to be shipped over each of the railroads?

Mr. WALTER: Yes.

Mr. SHEARN: And when was that understanding arrived at; when was it reached?

Mr. WALTER: Oh, I do not remember.

Mr. SHEARN: Was that not in January, 1896?

Mr. WALTER: I think it was; yes. I think so."

Afterwards, on cross-examination, however, he testified as follows:

"Mr. GOWEN: You have just spoken of these figures that were called the 'Presidents' figures, having to do with the relative tonnage over various roads, and you spoke of the matter as having originated in 1896. At that time, you had no connection with the Lehigh Valley road?

Mr. WALTER: No.

Mr. GOWEN: You do not know anything about how the figures started?

Mr. WALTER: I was not President of the Lehigh Valley at that time.

Mr. GOWEN: You had nothing to do with the coal business at that time?

Mr. WALTER: No.

Mr. GOWEN: During the time you were President of the Lehigh Valley Railroad Company, you were under no agreement or under-

standing which was binding on you, by which you undertook to regulate the percentage of shipments over the Lehigh Valley road? You could have decreased your percentage or run it up without violating any agreement?

Mr. WALTER: Yes, sir."

The natural inference to be drawn from Mr. Walter's testimony, as well as that to be drawn from Mr. Harris's testimony, would seem to be that, for sometime prior to January, 1896, as well as
727 for sometime thereafter, there had come to be what was generally thought a normal coal tonnage over the railroads respectively transporting anthracite coal, representing the capacity of the collieries in the regions tributary to those roads respectively, as derived from the reports of the Bureau of Statistics furnished to the Railroad and Coal Companies and the public generally. It would also seem from Mr. Ruley's testimony, as above quoted, that these supositi-ous percentages, which the so-called "presidents' percentages" of 1896 had by that time come to be, were not reported until January, 1901, in the monthly reports of the Bureau of Statistics, and were discontinued in May, 1903. Nor is it to be inferred, as it seems to be by the counsel for the petitioner, on page 57 of their brief, that immediately after the meeting of 1896, and not before, all the coal interests "reported to a common source their production and sale of coal,"—that is, to the Ruley Bureau of Statistics. On the contrary, Mr. Ruley's testimony shows that from 1890, when he took charge of the Bureau, these reports had been regularly made of the tonnage carried by the roads respectively, as well as of the sales of coal and prices obtained by the various shippers.

The objection to the admission of the copy of Mr. Walter's testimony, as taken before the Interstate Commerce Commission, must be sustained. It is testimony taken before a body not judicial but administrative,, in a proceeding between different parties, and with reference to non-identical issues. It is not authenticated or proven by any witness present at the time the testimony was taken. It is therefore not within the rules permitting the testimony of a witness taken in one proceeding to be used in another. The inclusion
728 of this testimony in the record is to be regretted, as it is embarrassing to the court in considering the weight and effect of all the testimony on either side. It may be said that the testimony, as far as its substance goes, is in the same line with the other testimony on the part of the petitioner; but the barriers between what is competent and incompetent as testimony, cannot be broken down without creating confusion and exposing litigants to dangers from which they have a right to be protected.

The testimony of Mr. Ruley, of the Statistical Bureau, in respect to the so-called "Presidents' percentages," is also referred to in support of the general conspiracy charge. This Bureau was started by one Jones, in 1876, as a private enterprise in industrial statistics, and he sold his compilations, among others, to the defendant carriers, individaully. In 1892, he sold out his business to Ruley, who has since carried it on, and whose work has been, and is now, recognized

as authoritative by those interested in industrial statistics. It is no doubt true that his patronage or employment has come largely from the defendant carriers and defendant coal companies, who are more than any others interested in these statistics, and indeed, since 1902 and perhaps before, they seem to have been compiled in great part from the monthly returns made to the Bureau by the defendant coal companies and the defendant carriers, severally, of the sales and shipments over the respective roads, and the price obtained for the different sizes of coal at tide water in New York Harbor. Mr. Ruley testifies that these compilations have been furnished each month to the Press,—that is, to the Coal Trade Journals—and thus find their way to the office of every considerable wholesale or retail dealer in anthracite coal. He testifies that they are also
729 furnished to the Departments of the general and state Governments. After the award made by the Anthracite Coal Strike Commission, in April, 1903, by which all the defendant companies and other coal operators in the anthracite region, by agreement previously made among themselves, were jointly and severally bound, it became necessary, in order to carry out the award of the Commission, as to the sliding scale of wages fixed thereunder, to resort to the monthly compilations of this Statistical Bureau, in regard to average prices for certain grades of coal at tide water in New York Harbor.

From Mr. Ruley's testimony, it appears that the appellation "Presidents' percentages" originated in one of the Trade Journals to which Mr. Ruley had contributed monthly tonnage reports. In his cross-examination, page 99, volume II of the Record, we find the following:

"Q. You said the other day that you got the 'Presidents' percentages' from the Press, if I understood you correctly, or Trade Papers?

A. I said they were published there, *and that is the only source of information I had in mind.*"

(The italics are ours.)

"Q. Did you ever talk with any President about the thing, one way or the other?

A. No, sir."

He then refers to a Coal Trade Journal which had been published for 35 years by Mr. Saward, and in connection with this Trade Journal was a Coal Trade Annual, published by the same person. He said he had them with him as far back as 1890. Referring to the Annual of 1890, he is asked:

"Q. I find below, on page 11, 'reducing the business done by each of the initial anthracite coal carriers to the basis of percentages, one may find that there are some interesting features attached
730 thereto. Taking the years 1886-1888 (the latter being the latest official figures available) one finds that the Reading Company did an average of 20.55 per cent., the Lehigh Valley 17.78 per cent., the Central Railroad of New Jersey 14.91 per cent., the Delaware, Lackawanna and Western 17.36 per cent., the Delaware and Hudson 11.29 per cent., the Pennsylvania Railroad 11.22 per

cent., the Pennsylvania Coal Company 4.55 per cent., and the Erie 2.27 per cent.; this fairly represents the 'ability to produce' of the several interests *on* collieries tributary thereto, whether the total output be 40,000,000 of tons annually or less.' Are you able to find anything earlier than that in any publication on the percentage basis?

A. I judge I could.

Q. That is the earliest you did find?

A. The earliest I could find in the files.

Q. In other words, for a long time the statisticians had been dealing with tonnages on the percentage basis?

A. Yes.

Q. What is the next one you have?

A. 1891. In 1896 there is quite an extensive report.

Q. In this report of 1896 one of the reports you had in mind the other day when you spoke of these Presidents' percentages being published?

A. Yes, sir.

* * * * * * *

Q. Without giving the monthly production and the shipments by the anthracite companies, and the production in each district, with its percentages, and the actual percentages of the whole shipments for the years 1890 to 1895, each year separately for the P. and R., the L. V., the C. R. R. of N. J., the D. L. & W., the D. & H., the P. R. R., the P. C. Co., the Erie, the O. & W., and the D. S. & S. on page 21—are these figures which you furnished originally to these publications yourself?

A. Yes.

731 Q. You recognize these figures?

A. I do not say I furnished the per cents. I furnished the tonnages on which the percentages are based.

Q. I find this statement, 'There was held on the 23d of January, 1896, a meeting of the representatives of the several anthracite producing and carrying companies in order to come to some agreement in regard to trade conditions and its improvement. According to the figures presented at the meeting the tonnage of the different companies in 1895, as compared with 1894, is as follows: Then follows the statements of the companies and the production for 1895, and the per cent. for 1894, and the changes of increase or decrease in percentages, the largest being a change of 1.45 per cent. This was referred to a committee to adjust, which a week later brought in a report recommending that for the period commencing February 1, 1896, and ending March 31, 1897, the following percentages should be adopted: Philadelphia and Reading 20.50, Lehigh Valley 15.65, Delaware, Lackawanna and Western 13.35, Central Railroad of New Jersey 11.70, Pennsylvania Railroad 11.40, Delaware and Hudson Canal Company 9.60, Erie Railroad 4, Pennsylvania Coal Company 4, Delaware, Susquehanna and Western 3.20, New York, Ontario & Western 3.10.' Now are these

percentages and these statements the percentages and statements you had in mind about seeing them in print in the trade journals?

A. Yes.

Q. Do you know of any earlier publication of the Presidents' percentages, except in the journal of which this is a compilation?

A. No, sir; I do not.

Q. And was it from these sources, or the original journal of which this is a compilation, from which you got the compilation from which you made your percentage reports and figures?

A. Yes."

732 He afterwards testifies that ever since he had been connected with the Bureau, since 1890, these journals have been giving the details of the anthracite coal statistics, the details for the month and the details for each company, together with circular prices of the different companies for each grade of coal. So that it appears that the only knowledge that Mr. Ruley had of a meeting on the 23d of January, or of any meeting was the publication in the trade journal above quoted. As to the statement made in this publication, it is to be observed that the so-called agreement as to percentages of coal traffic to be distributed among the carrier companies, was to obtain for the period commencing February 1st, 1896, and ending March 31st, 1897, and that these percentages correspond very nearly with those reported in the same trade journal for the years 1886-1888. Counsel for the Government rely upon Mr. Harris's testimony, that the understanding, such as it was, continued in force as long as he remained President of the Philadelphia and Reading. We do not think Mr. Harris's testimony, taken as a whole, will bear out this statement. Counsel also rely upon the fact that the reports of the Bureau of Anthracite Coal Statistics from January, 1901, to May, 1903, show a calculation of tonnages as they would be if based on the so-called Presidents' percentages. Referring to Government Exhibit No. 7, produced by Mr. Ruley as showing the form of these reports, we do not find that these percentages are spoken of as Presidents' percentages at all, though they undoubtedly correspond with what were reported as having been adopted in the meeting of January 23d, 1896, in the trade journal above referred to. Mr. Ruley's explanation of how they came to be included in his report, for what purpose, why he abandoned them after May, 1903, and that he had no
733 direction from any defendant to so include them, we think deprives their inclusion during the period mentioned of any evidential value, as claimed by the petitioner. In considering the question, whether the matter of the so-called Presidents' percentages furnishes any foundation for the general charge of combination and conspiracy in restraint of trade, as set forth in the petition, we must consider also the testimony of the defendants.

Mr. E. B. Thomas, President of the Lehigh Valley Railroad Company, testifies, first as to the general charge of the petition above referred to, as follows. The general charge having been read to him from the petition, he is asked:

"Q. Is that charge true or false?

A. It is not true.

Q. Did you ever have any knowledge of any such scheme as that which is charged?

A. I never did.

Q. Has there ever been any such agreement or scheme, or combination, or conspiracy between the defendants?

A. Never has. I have never known the time when every party in the trade was not at liberty to produce and transport all the coal he desired to, or that he could sell. If he could not sell it, he could throw it in the North River, if he wanted to.

Q. Did that agreement, or any such agreement as that, or any agreement of that character, exist at the time charged in the complaint, or at the time of the commencement of this proceeding, June 12th, 1907?

A. I never knew of any."

Coming to the question that the general conspiracy, as charged, was begun about the time of or at its origin in the arrange-
734 ment of the so-called "Presidents' percentages," on January 23d, 1896, Mr. Thomas's testimony is as follows:

"Q. Some testimony has been offered by the complainant about a meeting, or some meetings, which were held in or about 1896, of the Presidents of the anthracite railroads, at which there was an understanding, or an attempt at an understanding, between them as to percentages of product of anthracite coal to be carried by different railroads during that year. Were you present at any such meeting at that time?

A. Yes, I was present at a meeting where there was an attempt made to reach a tentative understanding as to the quantity of coal, proportion of coal, that each road would transport. It related entirely to transportation.

Q. For how long a period was that under discussion? I mean, what was to be the period——

A. The period was to be a year. There was not enough percentage in a hundred to go around, to begin with.

Q. What do you mean by that?

A. I mean to divide it into per cent., we had to put one hundred and one per cent. as near as we could come.

Q. In other words, there was some party or parties that were there that would not consent to the percentage that was talked about; is that right?

A. That is right.

Q. And never did consent?

A. Never did consent to it. As far as I have any knowledge, I do not think anybody ever regarded it. It came about by reason of crowded terminals, the question of distribution of cars among shippers.

Q. I wish you would explain that more fully?

A. The individual operators claimed that, in times of scarcity of cars, we were favoring our own companies, or those controlled by

the railroads, and that they were short of cars. There
735 was an attempt to distribute the tonnage to be handled on colliery production. The individual shippers would load up the cars and send them to tide water or to any other destination and allow them to accumulate and have no market for them. They crowded our terminals and then, when times came up that our own companies had not done the same, they claimed their same proportion of cars right along; and it was an endeavor to conduct the distribution of cars and movement of tonnage in a more orderly manner and in a more business like manner than it had previously been.

Q. And to meet these complaints?

A. To meet these complaints.

Q. And to enable the railroad companies to meet these complaints?

A. Precisely.

Q. Was any demand made at that time, or was any suggestion of any demand made, to curtail the output of coal?

A. None whatever. I recollect George B. Roberts, who represented the Pennsylvania at that meeting stating distinctly that he would not discuss any question of that kind or have anything to do with it; with which I heartily accorded.

* * * * * * *

Q. The percentages which were considered at that time were the percentages which have sometimes been referred to in this testimony as the 'Presidents' percentages'?

A. I assume that they were.

Q. Did that understanding or talk ever go into effect as an agreement?

A. Never.

Q. Was it ever put into operation?

A. I think some people tried to live up to it a little while, until they found the other fellow was not.

Q. Was there ever any talk about continuing it after the first year?

A. Never.

736 Q. By anybody?

A. There never was any meeting held after the first one, and I do not think there were any practical results out of that.

Q. Has there at any time since, except as to this early attempt by some of them, been any observation by the companies of these percentages which were adopted at that time?

A. Not to my knowledge.

Q. Has the Lehigh Valley Company ever observed them?

A. It has not."

Elsewhere, in speaking of these so-called "percentages," he says:— "I do not think that tentative understanding entered into ever had any practical result." He speaks of it repeatedly as an abortive attempt on the part of the carriers to prevent congestion of cars at the water terminals and docks, and to regulate the distribution of

cars at the collieries. He says, during the course of his testimony above quoted, that it was directed against a usage of the independent operators to load up long trains of cars, and to use the same to store up coal mined in advance of demand, but that whatever the purpose of the same was, it was not lived up to even for the year during which it was to be tried.

William Truesdale, another witness called by the defendants, at the time of testifying had been President of the Delaware, Lackawanna & Western Railroad Company since March 1st, 1889. In the course of his examination, he testifies as follows:

"Q. What is meant by Presidents' percentages?

A. I do not believe I am familiar enough with that matter to give any explanation of it. It is something that was arranged long prior to my connection with the Lackawanna Road, which
737 had nothing to do with our affairs since then, if it ever had.

Q. Did you ever enter into any agreement with any other person, whereby the tonnage of the different coal carrying railroads was distributed according to certain arbitrary percentages?

A. There was never such an agreement that I recollect of since my connection with the Lackawanna Railroad.

Q. Has there been any distribution of tonnage according to any percentage?

A. There has not.

Q. Do you know what the alleged Presidents' percentages are?

A. I know what is referred to by that.

Q. The Delaware, Lackawanna and Western's percentage. I believe, is said to be——

A. Thirteen and thirty-five one-hundredths per cent. under those old percentages.

Q. State whether or not the Delaware, Lackawanna and Western tonnage, since your connection with the railroad, has been maintained at about thirteen and thirty-five one-hundredths per cent?

A. No, sir. I think nearly every year we exceed that very much.

Q. State whether or not, since your connection with the Delaware, Lackawanna and Western Railroad, you have produced all the coal that you could profitably sell?

A. We certainly have, and most of the time we operate our collieries to the limit of their capacity.

* * * * * * *

Q. And you have sold that coal at the best price you could obtain for it?

A. We have."

W. A. Lathrop, a witness produced by the petitioner, had been in charge of the mines of the Lehigh Valley Coal Company
738 between 1889 and 1901, and President of the Lehigh Coal and Navigation Company since March, 1907. In the course of his examination, he testifies as follows:

"Q. Are the collieries of your company operated to their capacity throughout the year, and have they been since your connection with it?

A. Practically so. There are times during the Summer when that is not done, because we cannot find the people to buy our coal. Except that, they are worked practically full time.

Q. What proportion of the entire production of anthracite does your company put out?

A. I think the total production last year was about 67,000,000, as near as I remember, and our production was not quite 3,000,000. That would be about 5 per cent., a little less than 5 per cent.

Q. Do you endeavor to so operate your mines as to produce about that per cent. from month to month of the entire output?

A. No, sir; we do not pay any attention to that.

Q. You pay no attention to the output of the other companies?

A. We get out all the coal we can find customers for. We would be glad to get out more if we could find them."

Mr. George F. Baer, who testifies that he has long been familiar with the affairs of the predecessors of the present defendants, The Reading Company, The Reading Railway Company, and The Reading Coal and Iron Company, as counsel for and director in the same, in 1901 became President of the defendant companies above named. After stating that The Philadelphia and Reading Railway Company is not a competitor for the carriage of coal, which originates in the northern or Wyoming region and the Lehigh or middle region, and that the operations and holdings of the Phila-
739 delphia and Reading Coal and Iron Company are confined entirely to what is known as the lower and Schuylkill region, testifies as follows:

"Q. Was there ever at any time, or is there now, anything in the nature of a division agreed upon or participated in by these defendants, of the tonnage carried by them?

A. None whatever. There is absolutely no division of coal tonnage and has not been to my knowledge during the period since my active connection with the systems. During my administration, of which I can speak absolutely, there never was any division or attempted division of coal tonnage. We mine and market all the coal we can, without regard to what other companies are doing. It is as free and open a market, so far as that goes, as exists in any commodity in the world."

Taken in connection with the defendants' testimony, above quoted, it is not without significance too, that tables, filed as exhibit by the Government, of the tonnages of the different defendant carriers after 1896, are utterly inconsistent with the existence of any pooling agreement. We take the following analysis of certain of these tables from the brief of the Lehigh Valley Railroad and Coal Companies. Taking the Government's specimen report (Exhibit 7, vol. III, p. 34) for the five months of 1903; it appears that over 1,500,000 tons, on which the freight at an average of $1.24 per ton, amounted to about $1,860,000, was carried by some railroads in excess of their allotments, provided the pooling agreement existed at that time. The want of conformity by the defendant carriers and others to the so-called "Presidents' percentages," from 1896 to 1908, is more com-

prehensively shown in the table furnished by the Erie Exhibit No. 16, vol. VI, page 455, exhibiting the yearly percentages of
740 shipments of anthracite coal by the several transporting companies, from 1892 to 1908, inclusive.

"Taking from this table only the figures for the years 1896 to 1908, they show that some railroads carried tonnage greatly in excess and others as much short of the tonnages allowable under the supposed pooling agreement, to wit:

	Tons over.	Tons under.
Reading		2,490,892
Lehigh Valley		1,705,015
Jersey Central	3,241,078	
D., L. & W	10,730,454	
D. & H		934,132
Penna.		12,185,542
Erie		1,570,357
O. & W	7,069,496	
D. S. & S		2,150,094
	22,041,028"	

That is to say, the three railroads, Jersey Central, Lacakwanna, and Ontario & Western, violated the agreement, if it existed, by carrying over 22,000,000 tons more than they had right by the agreement to do. The earnings on this tonnage, at an average rate of $1.24 per ton (see vol. II, p. 690) would have been $27,280,000, which represents approximately the amount that these three railroads obtained in earnings in excess of their right under the agreement, if it existed, and there is no evidence that any complaint was ever made by any of the companies on this account.

We are compelled to conclude that thus far the direct evidence relied upon by the Government to show that all the before mentioned defendants have long been parties to a general combination and conspiracy, commencing presumably in 1896 and continuing down to
741 the filing of the petition, which stifles competition and obstructs trade and commerce among the states in anthracite coal, fails to establish that charge, and we turn now to a consideration of what may be called the indirect testimony adduced, from which it is contended the existence of such general conspiracy must be inferred. In this respect, we are called upon chiefly to consider the acts charged in the seventh paragraph of the petition to have been committed by certain groups of the defendants in development of this illegal combination, and in furtherance of its illegal purpose, of which we have already given a summary.

The first of these has relation to the so-called 65 per cent. contracts. Much testimony has been taken on both sides in explanation of these contracts, which must be examined, in order to determine their character. It appears that, long prior to 1890, it had become a custom more or less prevalent in the anthracite region, for the smaller operators of collieries to sell the product of their

mines to the large coal companies producing and shipping coal in their neighborhood, f. o. b. on the railroad to which their mines and territory were contiguous and naturally tributary. The terms on which these sales were made gradually came to be common to all parties so engaged; that is to say, instead of a fixed money price per ton, it was agreed that the small producer or independent operator who delivered his coal f. o. b. on the cars, should receive a certain per cent. of the average price at which that grade of coal was sold during the month in the tide water market of New York Harbor. Out of the balance over such percentage must come the freight of the carrying company, and whatever profit there might be for the purchasing coal company. The advantages of such sales to the independent and smaller operators were stated by
742 many witnesses of that class. To have marketed their own coal would have required sales agents and the maintenance of offices at the various market points, and would have entailed the cost of insurance and the risk of collections, and not infrequently the cost of storage, upon the seller. All this was avoided by the contracts in question, and the seller, upon delivery of the coal upon the cars, was done with it and received each month from a responsible buyer the price of his coal, as determined by the contract. There is no doubt from the evidence that this method of dealing between the large companies and the smaller operators grew in favor with both parties to the contracts. The large purchasing companies being compelled to maintain sales agents and offices at the market points and provide for insurance or storage, if needed, were put to little additional expense in caring for and disposing of the coal thus purchased. There is no evidence to show that this custom had its origin and subsequent growth in any agreement or concerted scheme on the part of the defendant carriers or coal companies, or others in the business.

The testimony of the operators called by the Government, and occupying a large space in the record, shows that this custom had commenced back as far as 1860, one of them saying that they were educated to it from the first, by reason of the difficulty of getting cars and transportation just when they wanted it, to meet sales, but they all say that the principal reasons were those above enumerated. —the expense of maintaining selling agencies and offices, risk of handling, and expense of storage, as contrasted with the regularity and certainty of payment secured by the method of selling f. o. b. to the large companies.

The rate of these percentage contracts was at first as low as
743 40 or 45 per cent. This percentage rose gradually to 55 per cent. About 1890, and for sometime prior thereto, there had been some dissatisfaction expressed by the selling operators with the returns coming to them under these contracts. This dissatisfaction culminated in 1892, in an arrangement by which certain of the coal companies in the Wyoming region offered to take the product of the mines of the independent operators contiguous and tributary to certain of the railroads, on a 60 per cent. basis. This seems to have been the result largely of negotiations had with Simpson

and Watkins, large colliery owners of that region. (See testimony of Clarence D. Simpson, Record, Vol. II, p. 440, et seq.) Simpson had insisted on 65 per cent., but 60 per cent. was finally agreed upon. This percentage seems to have been adopted by all the other coal companies and coal roads; whether by any concert or agreement among them, does not appear. This rate generally obtained until about 1899, when demands were made by some of the independent operators, whose contracts had expired or were about to do so, for an increase in the percentage prices to 65 per cent. Negotiations between the representatives of the independent operators and the coal companies and railroads were carried on for some time, without result, when early in the Fall of 1900, a general strike of the coal miners and laborers of the whole anthracite region took place, resulting in an entire cessation of the production of anthracite coal.

There is some conflict in the testimony and in the contentions of counsel, as to the influences which brought about, on the part of the large coal companies and coal carrying roads, an acquiescence in this demand for 65 per cent. contracts. We think, however, it is established by the clear preponderance of the testimony
744 that, during the autumn of 1900, those controlling the large coal companies and railroads affected by the strike, were induced to concede to the striking miners a ten per cent increase in their wages; that though this was agreed to on the part of the representatives of these companies, the smaller and independent operators were unwilling to accede to this increase, on the ground that it would necessitate the production of coal by them at a loss. As the strike extended over the whole anthracite region, and affected all producers of coal alike, the representatives of the striking miners refused to accept the settlement on the basis of this increase, unless agreed to by practically all the producers and operators throughout the region.

The proposed settlement having been thus brought to a standstill, conferences took place between representatives of the large coal producing companies and these dissentient operators,—notably with those who had been parties to the expired 60 per cent. contracts, with the result that it was agreed that new contracts should be framed and entered into, by which 65 per cent. of tide water prices should be given by the purchasing companies, instead of the 60 per cent. of the price obtained at tide water under the former contracts, in consideration of the entire output of the mines of the contracting operators, without limitation as to time, "shipments to be made from time to time as called for by the buyer." On these terms, such operators were to join in the settlement of the strike on the basis of a 10 per cent increase in wages. Pursuant to this agreement, a form of contract, embodying its terms, was drawn up, which was presumably acceptable to all parties. At all events, contracts substantially in this form were thereafter, from time to time, executed severally between the theretofore purchasing coal companies

and many of such so-called independent miners as produced
745 their coal in territory contiguous and tributary to the roads over which the purchasing companies shipped their coal. These contracts provided that, "the general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant, satisfactory to both parties, to whom the buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month, and the amount realized therefor by the buyer at tide on all sales of each size of coal from the —— region, and the accountant each month shall make a true average price for each size sold at tide of all the coal sold from the same region, and the average prices thus obtained shall be furnished by the accountant to the buyer and seller."

The expert accountant selected to make these returns was, naturally, Mr. Ruley, of the Statistical Bureau, who had since 1890 been furnishing these same statistics to the coal producing companies and all others interested.

Counsel for the Government argue from the fact that these accounts were so rendered to the parties interested, that there must have been some concert or agreement in violation of the Act of Congress among the defendants and others, with reference thereto. We cannot so regard it. It is, of course, possible that the information obtained from these monthly reports of the Statistical Agency or Bureau maintained by Mr. Ruley and his predecessors, might — have been of some use to such a combination as is charged in the bill, to maintain rates of freight or prices of coal in the anthracite region, but, in the absence of any direct proof of such a combination, it is a very violent presumption, indeed, that, because of the exist-
746 ence of such statistics and monthly reports, published in all the Trade Journals of the Country and in the hands of every retailer of coal, as well as in those of every producer of coal, there must have been such an illegal combination; and this too, in face of the fact that many obviously legitimate and useful purposes were to be subserved by such publications, to which all intelligent persons interested in the conduct of the business of producing, selling, carrying and consuming coal would, for their own information and advantage, refer. There does not seem to be the slightest direct proof, apart from the presumption we are asked to indulge in, of any illegal combination or contract promoted by the use of these statistics. The reports were public, and there is not the slightest intimation of any secret correspondence between the Statistical Bureaus and the defendants. This information, open to every one, was doubtless useful in many legitimate ways to those who subscribed for and supported it. We might as well be asked to draw unfavorable inferences, in the absence of other proof, from the use by the defendants of the statistics published by the State or Federal Governments, concerning mining operations and the coal supply of the Country.

The genesis of these contracts being found in the long established custom above described, the general raising of the percentage of price

at tide water to be given to the individual seller, incident to the settlement of the strike, and the insistence by the so-called independent operators, whose previous contracts had expired, is not to be considered as necessarily predicated on any concert or agreement denounced by the Act. Moreover, these contracts were clearly intrastate and not interstate in their character. They were complete when
747 the coal was delivered at the mines f. o. b. to the buyer. They did not control or affect, except indirectly and incidentally, interstate commerce; much less did they suppress or restrain such commerce. No stipulation of the contract directly or indirectly touched the movement or disposition of the coal by the buyer after its delivery under the contract to purchase. Such buyer might have withheld all the coal thus purchased from the stream of interstate commerce, disposed of it in the state where it was bought, or in any other way exercised to the fullest extent every right appertaining to complete ownership of personal property. The law of July 2d, 1890, cannot be so construed, or such a purpose be imputed to those who enacted it, as to strike with nullity the legal intrastate contracts which do not in purpose or effect directly relate to or touch "commerce with foreign nations or among the several states." No judgment of the Supreme Court sanctions such an interpretation. On the contrary, that court has always adhered to the doctrine that the manufacture and sale of commodities within a state are not within federal control under the commerce law, merely because such commodities may, as well as may not, after their manufacture or sale, become the subject of interstate commerce. These contracts were not for the sale of coal to be delivered in another state. They did not reach beyond the delivery of coal f. o. b. the cars at the breakers. If such coal afterwards entered the stream of interstate commerce, it was because the buyer chose that it should do so, and it was then within federal jurisdiction under the commerce clause of the constitution. But the contracts by which the title to such coal was acquired, not relating to or affecting, except incidentally and indirectly, interstate commerce, are not amenable to federal control.

748 It is said, however, that these contracts were made pursuant to concert or agreement entered into among the purchasing coal companies. It might be a question whether such contracts, even if the result of concert and combination, were in restraint of trade. But the evidence does not satisfactorily establish the existence of such combination or concert. The contracts were made, not by all with all, or by all with one, but by the coal companies severally with individual operators. In all essential features, these contracts took the place of the expiring contracts, whose history and genesis we have summarized. They were the result of the natural development of the business and the peculiar conditions pertaining thereto in the coal region during a long series of years, and so far from being in restraint of commerce, contributed largely to its orderly and healthy growth. That the price given was determined by the price obtained for similar coal at tide water in New York Harbor, did not impress an interstate character upon the contracts in question. It was merely the fixing of the standard by which the prices should be measured,

and in no wise differed from the fixing of the price of such coal by the price obtained in San Francisco or Boston. In fact, the evidence is, that a large part of the coal so purchased was not taken to tide water at all, but was, to a considerable extent, disposed of in the state of Pennsylvania.

Nor does the mere fact that, during the long period when these contracts were in vogue, there was equality in the percentage offered and paid by the buyers to the sellers, or practical equality in the prices obtained by different defendants as sellers at tide water, argue any concert or combination denounced by the Act of Congress.

Equality in prices for staple articles given and received, is the
749 general result of free competition among buyers and sellers. Of this, the grain markets and cotton markets of the world furnish signal examples. Nor can we attribute to the so-called 65 per cent. contracts an inherent illegality under the law, in the fact that they provide for the purchase by the coal companies of the whole product of the mine, whereas the percentage contracts prior to 1900 or 1902 were to continue only for a term of years. To buy the whole product of a mine is just as legitimate a transaction as to buy a portion of it. To buy the whole produce is just as legitiate as to buy the mine itself. And it is difficult to see how the 65 per cent. contracts directly affect interstate comerce, if, as seems clear to us, those to which they succeeded did not. A form of contract used for purchase and sale under these contracts has been shown. Uniformity in the framework of these contracts would seem to be the natural result of the situation, each seller demanding the terms that obtained among other sellers, and is no more evidence of concert or agreement, illegal or otherwise, than the uniform character of negotiable notes and bills of lading, as used in the business world. There is no evidence to show that the coal bought by the coal companies under these 65 per cent. contracts was not sold by them in competition with each other, just as it is proved all other coal owned or produced by them was sold, whether at tide water in New York City, or elsewhere.

Being clearly of the opinion that these so-called 65 per cent. contracts are not within the mischief denounced by the Act of July 2d, 1890, and have no proved connection with any general combination or conspiracy, as charged in the seventh paragraph of the bill, I think as to them the bill should be dismissed.

Nor can we agree that the abortive or abandoned attempts
750 by the defendants, or some of them, to come to agreements or arrangements in 1876, 1884, and 1886, even if admitted to be of a character now denounced by the Act of July 2d, 1890, have any evidential bearing, remote or otherwise, upon the charge now being considered by the court. In the first place, the several acts referred to were legal when made. They certainly violated no Act of Congress then in force; and in the second place, were abandoned long before the passage of the Act now under consideration.

If no general agreement or conspiracy in violation of the Act has thus far been disclosed by the testimony, direct or indirect, it is hardly worth while to consider in this connection at any length, the

separate acts of individual defendants or groups of defendants, so far as they are alleged to have been committed as steps in the development of the general illegal combination charged in the petition, and in furtherance of its illegal purposes. Nor do these separate acts constitute circumstances from which the existence of such general unlawful combination and agreement can be inferred. The alleged absorption by the Erie Railroad Company, in January, 1898, of the New York, Susquehanna & Western Railroad Company, even if it were held violative of the provisions of the Act of July 2d, 1890, on the part of the two companies concerned, has no relation whatever, necessary or otherwise, to any general conspiracy, such as is charged against all the defendants. The same observation is true, also, of the transaction in which the Reading Company acquired a majority of the shares of the capital stock of the Central Railroad Company of New Jersey, thereby, as alleged, uniting and bringing together under a common head and source of control, that company and the Philadelphia and Reading Railway Company. In fact, if all be
751 true, as is alleged of these two transactions, they enabled these two groups of defendants to compete more efficiently with some of the other defendants. They certainly do not tend to prove the conspiracy which must be assumed, if they are to be considered as steps in the development or furtherance thereof.

A careful consideration of the very able argument and brief of the counsel for the Government, does not convince us that the evidence discloses any such general contract, combination or conspiracy among the defendants in restraint of trade or commerce among the several states, or to monopolize any part of the trade or commerce among the same, as charged in the petition. Certainly there is no direct evidence of such a combination or conspiracy, and we think it is equally obvious, from what we have just said, that there is no indirect or convincing circumstantial evidence of the existence of such a conspiracy. The things herein charged are violations of law, and constitute the crimes denounced by the Act. We refrain from saying that, on that account, the degree of proof of their commission should be that required upon the trial of indictments therefor. It suffices to say that the evidence should be such as to convince the mind of the tribunal to which it is addressed, that the acts denounced by the law have been committed. The consequences attending the finding of the defendants guilty of the acts charged in the petition in this proceeding, are certainly very serious, not only to the defendants, but to a large portion of the public and to many innocent persons involved in these transactions. As we have before said, this consideration can only be pertinent to invoke a more careful consideration of the testimony adduced in support of the charges made in the petition.

752 We are not unmindful that the conspiracies and combinations forbidden by the Act may be proved otherwise than by direct and positive testimony of definitely formed agreements, and that it is a part of the law of conspiracy, that "if there is a meeting of minds brought about in any way to accomplish the common purpose, the essentials of a guilty combination are all satisfied." We fail,

however, to find in any of the acts and transactions disclosed by the testimony, evidence of any general combination or purpose to combine in violation of the provisions of the Act continuing after the date of its enactment. Except as hereinafter stated, we cannot find, from any fair intendment of the Act in question, a purpose to denounce general conditions and relations such as now exist among the parties engaged in the mining, selling and transportation of anthracite coal, whether intra-state or interstate in its character, disclosed by the evidence, as now existing since July 2d, 1890, and we can impute no intention to the framers of the Act to disturb such conditions.

To violate the Act, there must be a contract combination or conspiracy, which in purpose or effect tends to restrain trade or commerce among the states, or to monopolize some portion thereof. Whether in purpose or effect violative of the Act, such contract, combination or conspiracy must have the ordinary meaning attached to those words. There must be the meeting of the minds of two or more, to accomplish some common purpose directly violative of the Act, or a purpose which will, whether intentional or not, in effect constitute a restraint of trade and commerce among the several states. In most of the cases under this Act which have come before the Supreme Court, the existence of the contract, combination or
753 conspiracy, has been either admitted or clearly and definitely proved, and the question of difficulty presented to the court was, whether the contract, admitted or proved, came within the purview of the Act. In this case, however, we are met at the threshold with the denial of the existence of any such contract, combination or conspiracy, generally charged against all the defendants, and with what we think is a deficiency in the evidence adduced to support the same.

In the Addystone Pipe case, 175 U. S., at page 235, the court say:—"We are thus brought to the question, whether the contract or combination *proved* in this case, is one which is either a direct restraint or a regulation of commerce among the several states or with foreign nations, contrary to the Act of Congress." (The italics are ours.) Immediately thereafter, the court adopt the statement of special facts made by the learned Circuit Judge, in part, as follows: "The defendants, being manufacturers and vendors of cast iron pipe, entered into a combination to raise the prices for pipe for all states west and south of New York, Pennsylvania and Virginia, constituting considerably more than three-quarters of the territory of the United States and significantly called by the associates 'pay' territory."

In the Northern Securities Case, 200 U. S., of course the existence of the contract or combination, the result of which was the incorporation of the Northern Securities Company, for holding the stock of and controlling and managing two competing railroads, was not denied. Its terms and conditions and purpose were before the court, and were not the subjects of dispute or controversy. The question argued before the court, and upon which the court divided, was whether this combination, admittedly existing, was within the purview of the Act of Congress.

754 In Swift & Co. v. The United States, 196 U. S. 375, the case came up upon demurrer by the defendants to the petition, and the Supreme Court decided in effect, that the allegation as to the existence of a contract, combination or conspiracy, was sufficient.

In Loewe v. Lawlor, 208 U. S. 274, the combination to "boycott" the interstate trade of a certain hat manufacturer in Connecticut, was admitted or clearly proved.

So far, we have considered the denunciation of agreements or combinations in restraint of trade as set forth in the first section, and combinations to monopolize any part of interstate trade, together, because both involve the agreement and combination of two or more persons to accomplish a common purpose, as above discussed.

Section 2, however, makes it an offense for any person to monopolize, or attempt to monopolize, any part of interstate trade or commerce. The monopoly feature of the Act is covered by the charge of combination and conspiracy to monopolize, and the individual offense can only exist as to individual defendants. There must, however, be a clear, legal concept of the words "monopolize" and "monopoly," in order to properly consider the charge in this respect, as set forth in the petition. The word is hard to define, and no attempt at exhaustive definition need be made. It will suffice to say that the mere extent of acquisition of business or property achieved by fair or lawful means cannot be the criterion of monopoly. In addition to acquisition and acquirement, there must be an intent by unlawful means to exclude others from the same traffic or business, or from acquiring by the same means property and material things. As said by Judge Sanborn in U. S. v. Standard Oil Co., 173 F. R., "It" (the anti-
755 trust act) "was enacted, not to stifle, but to foster competition, and its true construction is that, while unlawful means to monopolize and to continue an unlawful monopoly of interstate and international commerce are misdemeanors and enjoinable under it, monopolies of part of interstate and international commerce, by legitimate competition, however successful, are not denounced by the law, and may not be forbidden by the courts."

But, even if the proper interpretation of the word "monopoly" were as broad as contended for, as we have already said, we find no evidence to support the charge of an agreement, combination or conspiracy on the part of the defendants in that regard.

The Supreme Court has said that it was not the intention of the court to obstruct, trammel or interfere with the freedom of business, or with the necessary or lawful relations of those engaged in it. The situation in the anthracite region is a somewhat unique one. The territory in which the anthracite coal deposits are found is comparatively a restricted one, and the development of the business of producing, preparing for the market and transporting it, though necessarily affected by the peculiar conditions surrounding it, has had, on the whole, a natural, wholesome and beneficial growth. It cannot be that every phase in this development, which tends to the better regulation of a business engaged in by many operators, corporate and individual, which incidentally but not directly affects the sell-

ing and transportation of coal in and to other states, in the absence of the unlawful purpose denounced in the Act, can be vested with the serious consequences sought in this case to be visited upon the defendant. We have already commented on the fact that the development of this business has tended to eliminate from it the
756 confusion, loss, and wasteful conditions which characterized the earlier period of its growth, in accordance with the natural laws which govern competition and reward intelligence and enterprise.

It has been said in many cases, and the brief of the United States admits, that mere acquisition of the material sources of wealth, and the enlargement of business and traffic, accomplished without the illegal combination or conspiracy denounced by the Act is not unlawful. In the present case, it has resulted in a large percentage of the coal lands of the region being held by wealthy and powerful corporations who have the ability, and whose interest it is, to conserve those natural resources so valuable to the people of the whole Country. The evidence of this case tends to show that these large holding and carrying companies do carry on their business in competition with each other; and there is nothing to show that there has been any general agreement or combination between them, verbal or in writing, in restraint of trade and commerce among the states, by a suppression of competition or otherwise, as is charged in the first clause of the seventh paragraph of the petition.

Counsel for the Government insist that the cases in which the Supreme Court has discriminated between those Acts of the State Legislatures which unlawfully invade the exclusive domain of Federal regulation of interstate commerce, and those which do not, are applicable to the consideration of the present case. I think this is so only in a qualified sense. But, pursuing the argument on this line, we find that the Supreme Court has said repeatedly, that State legislation enacted without intent to regulate interstate commerce, is only unlawful if it directly and substantially interferes there-
757 with, but not so if it affects interstate commerce only incidentally and not substantially. I find nothing in this case, either in the evidence in support of the general charge of conspiracy, or of the individual acts of the Reading Company, with reference to the stock of the Central Railroad Company of New Jersey, or of the Erie Company, with reference to the stock of the New York, Susquehanna & Western Railroad Company, by which there has been made manifest any purpose to restrain interstate commerce, or anything to show that the effect of these transactions has been to directly interfere therewith.

As to the Temple Iron Company transaction, in which seven of the defendants are involved, to wit, the Reading Company, the Central Railroad Company of New Jersey, Lehigh Valley Railroad Company, the Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, it is charged, and the charge is supported by the proof, that the defendants named entered into a combination or conspiracy to defeat and prevent the building of a railroad and the

construction of an interstate route for the carrying of coal from the Wyoming region to tide water. The details of this transaction are fully set out in the opinions written by the other members of the Court, and need not be here repeated. I agree with the conclusion reached in one of these opinions, that this so-called Temple Iron Company transaction involved a combination or conspiracy by the defendants above named, in violation of the Act of July 2, 1890, as being in restraint of commerce among the states. It seems to me clear that an agreement was come to by the defendants named, which resulted in concerted action for the avowed purpose of bringing about an abandonment of the project of a route from the Wyoming
758 coal field in the state of Pennsylvania, for the carriage of coal, to tide water in the state of New York. This avowed and conceded purpose rendered all that was done in pursuance thereof violative of the Act of Congress in question, however innocent and legitimate it might have otherwise been. It is true, that the Simpson & Watkins collieries might have been innocently purchased by the defendants, separately or in combination, but as they were purchased in order to carry into effect the purpose of an unlawful combination, it seems to me the transaction was clearly within the denunciation of the law. The Temple Iron Company was the palpable instrument or means by which the unlawful purpose of the combination was accomplished, and its acquirement of the said collieries, in pursuance of that combination, must be held as illegal. I cannot think that the fact that the Pennsylvania charter of the proposed railroad—The New York, Wyoming and Western by name—only authorized its construction from a point in the Delaware River, in Northumberland County, Pennsylvania (being also the boundary line between the states of New Jersey and Pennsylvania), opposite or near Belvidere, New Jersey, and thence to a point in the Susquehanna River, within or near Pittston, Luzerne County, Pennsylvania, with the necessary branches or laterals, affects in any way the character of the combination charged as being illegal. It clearly appears from the evidence that a project for a railroad route from the coal fields in Pennsylvania to tide water in New York, was being discussed and ostensibly promoted by named parties interested in the coal regions, notably the firm of Simpson & Watkins, and that the charter above referred to had been obtained as a step towards the consummation of the
759 purpose to construct such a route. I do not think we are called upon to consider and weigh the evidence, pro and con, as to whether the projectors of this route would or would not have been able to carry the same to completion. It matters not for present purposes whether the enterprise would have resulted, or not, in failure. The important fact is, that the defendants named, interested in the production and carriage of coal from Pennsylvania to tide water in New York, believed that the project of constructing such a route was a serious one, and that it induced them to combine, in order to thwart that purpose. The combination brought about the abandonment of the project, and the possibility of a competing road in interstate commerce was, for the time being, frustrated. I cannot escape the conclusion, therefore, that the decree of this court

should denounce as illegal the combination by which this result was brought about, if a decree for an injunction, under the prayers contained in the petition can be founded upon such denouncement.

The injunction or restraining order specifically prayed for in the petition should be granted, so far as it will serve "to prevent and restrain" the future or continuing violation of the Act. This is the only jurisdiction conferred upon the court in such a proceeding as the one before us, and there can be no injunctive relief granted, unless it tends to restrain some specific future or continuing violation of the Act.

760 *Concurring and Dissenting Opinion.*

BUFFINGTON, Circuit Judge:

I concur in the court holding the Temple Iron Company an illegal combination.

I dissent from its action in dismissing the bill as to the 65% contracts.

I restrict my opinion to discussing those two subjects.

761 I concur in the court's dismissal of the bill as to the other matters.

This petition, in the nature of a bill in equity, filed by the United States against certain railroads hereinafter named, and a number of other respondents, charges violations of section one of the Act of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies", which provides that, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal", and section two, which provides that, "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor", etc. The petition is filed in pursuance of section four, which enacts that, "it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations." The case is on final hearing and its determination involves two questions, viz.: first, the meaning of the law; and second, whether the facts proven fall within its prohibitions.

In taking up the first question, it is well to note that the validity of the law being conceded, the court's duty is simply to declare its meaning and enforce its provisions, for whether the law itself is in the line of sound commercial policy and industrial progress is a legislative, not a judicial, question. It suffices to say Congress has passed it; the Executive, in pursuance of its terms, seeks to enforce

762 it; it remains for the court, not to question the wisdom of the Legislature in enacting, or the Executive in enforcing, but simply to declare its meaning and give effect to its provisions.

The first section uses broad, inclusive words. The object of the law is to prevent "restraint of trade or commerce among the several states"; and this is accomplished by making illegal "every contract, combination in the form of trust or otherwise, on conspiracy, in restraint of trade or commerce among the several states". The words, "contract", "combination", "conspiracy", are clear, and "trade among the several states" is equally so. The coupling phrase "in restraint" would seem to be the only term open to question.

Restraint is a comprehensive word and covers the several individual kinds thereof described in,—check; hinder; repress; curb; restrict. By the use of this broad phrase, "in restraint of trade or commerce", it would seem that one of the objects Congress had in view was the maintenance of that natural, free flow of commerce incident to its commercial, competitive character. We are therefore justified in holding that, although the word competition is not used therein, this Act, as said in Chesapeake & Ohio Fuel Co. v. United States, 115 Fed. Rep. 610, 620, (a case in which two of the present justices of the Supreme Court sat), was "aimed to maintain interstate commerce on the basis of free competition". Such being the case, and the Supreme Court has likewise held, we have an aid both to its construction and enforcement, namely, the object for which the law was enacted.

Turning now to the decisions of the Supreme Court, it was decided in the Northern Securities Case, 193 U. S., 337, that,—

"The means employed in respect of the combinations for-
763 bidden by the Anti-Trust Act, and which Congress deemed germane to the end to be accomplished, was to prescribe as a rule for interstate and international commerce, (not for domestic commerce), that it should not be vexed by combinations, conspiracies or monopolies which restrain commerce by destroying or restricting competition. We say that Congress has prescribed such a rule, because in all the prior cases in this court the Anti-Trust Act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce: in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce. Now, can this court say that such a rule is prohibited by the Constitution or is not one that Congress could appropriately prescribe when exerting its power under the commerce clause of the Constitution? Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine. Undoubtedly, there are those who think that the general business interests and prosperity of the country will be best promoted if the rule of competition is not applied. But there are others who believe that such a rule is more necessary in these days of enormous wealth than it ever was in any former period of our history. Be all this as it may, Congress has, in effect, recognized the rule of free competition by declaring illegal every combination or conspiracy in restraint of interstate and international commerce. As in the judgment of Congress the public convenience and the general welfare will be best subserved when the natural laws of competition are left

undisturbed by those engaged in interstate commerce, and as Congress has embodied that rule in a statute, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men."

764 As further emphasizing free competition as the object of the statute, the court stated its preceding decisions established the proposition, "that Congress * * * has prescribed the rule of free competition among those engaged in such commerce," and "We need only say that Congress has authority to declare, and by the language of its Act, as interpreted in prior cases, has, in effect declared, that the freedom of interstate and international commerce shall not be obstructed or disturbed by any combination, conspiracy or monopoly that will restrain such commerce, by preventing the free operation of competition among interstate carriers engaged in the transportation of passengers and freight."

Since, then, the object of the Act is to conserve free competition in interstate commerce, we are justified in holding that the phrase, "in restraint of trade or commerce among the several states" forbids everything that restricts free competition in interstate commerce. This brings us to inquire whether any combination of that nature exists in this case.

The anthracite coal supply of the United States is practically limited to a small area of less than five hundred square miles in northeastern Pennsylvania. Its consumption is general in other states, practically four-fifths of the entire output entering into interstate commerce in 1905. Six interstate railroads, hereinafter called the defendant carriers, to wit, Reading Company (owning the Philadelphia & Reading Railway Company); the Lehigh Valley Railroad Company; the Delaware, Lackawanna & Western Railroad Company; the Central Railroad of New Jersey; the Erie Railroad Company; and the New York, Susquehanna & Western Railroad Company, haul about 80% of the output and control all means of transporta-

765 tion from the anthracite field to New York Harbor, the principal market for anthracite coal, save relatively small territorial facilities of the Pennsylvania Railroad Company and the New York, Ontario and Western Railroad Company. These six defendant-railroads are not only competitors with each other by virtue of the natural conditions incident to all common carriers, but being themselves, through their several subsidiary coal companies, hereinafter called defendant coal companies, buyers of coal from operators, producers of coal themselves, and likewise sellers of such bought and produced coal, they are in keen competition with each other not only in transporting, but in buying coal to originate freights and in selling it to realize profits. It will be observed that since 1895, the defendant railroads have through their subsidiary coal companies, increased their coal holdings by 30,000 acres and from producing in 1900, 68% of the total output, they produced 78% in 1907. The substantial identity of the several defendant railroads and their respective subsidiary coal companies is shown in the proofs. Take, for example, the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company. The coal company's stock is all owned by the rail-

road company. No dividend has ever been paid upon it. The funds to operate it are advanced by the railroad company. Its present indebtedness to the latter is about eleven million dollars. On this no interest is paid. Both companies have the same officers and in its annual report the railroad company says, "under existing arrangements the Lehigh Valley Coal Company is compelled to depend upon the Railroad Company for working capital to carry on its operations." In other words, the coal company is the subsidiary, corporate hand of the Railroad Company, and while its corporate entity is
766 separate, yet in work, profit, interest, and official personnel, it is but an alter ego of the Railroad Company itself. And such is the view taken of this relation by the courts. In Interstate Commerce Commission v. Baird, 194 U. S. 42, the Supreme Court say: "Here is a railroad company engaged at once in the purchase of coal through a company which it practically owns."

The anthracite field is divided into three regions, called the Lehigh, the Schuylkill, and the Wyoming or Lackawanna. In 1907, some sixty-seven million tons of anthracite were mined in these regions, of which over seventeen millions were carried to New York Harbor. From seventy to seventy-five per cent. was produced by the defendant railroads through their coal companies, and the balance by individual operators. Their respective coal tonnages in that year were:

Philadelphia & Reading Railway Co.	20.89	
Central Railroad of New Jersey	12.99	
Lehigh Valley Railroad Company	17.18	
Delaware, Lackawanna & Western R. R. Co.	15.25	
Erie Railroad Company	10.66	
		76.97
Delaware & Hudson Company	9.78	
Pennsylvania Railroad Company	9.24	
New York, Ontario & Western	4.01	
		23.03
		100.

Referring, for convenience, to the summary for relief at the conclusion of the Government's brief, we may say that the first, second and fifth grounds of relief refer to general acts in which all the defendant railroads are alleged to have joined, while the third, fourth, sixth, seventh and eighth concern acts in which some but not
767 all of the defendant railroads participated. Objection to the joinder of such rights of action was first urged upon the court at final hearing. Without entering upon a discussion of the authorities bearing on multifariousness, we content ourselves with saying the omission of the respondents to urge this ground until the final hearing was a waiver thereof, and while a court on such hearing may, of its own motion, dismiss a bill, it will not do so if that objection does not embarrass or prevent it decreeing relief. Without, therefore, holding this bill free from objection in that regard, we are of opinion in view of all the circumstances attending the conduct of the case that it should not be dismissed on that ground and we accordingly

address ourselves to the merits, and in doing so we confine ourselves to the Temple Iron Co. transaction and the sixty-five per cent, contracts, taking up first the combination of these six defendant railroads through the Temple Iron Company, for in our opinion that transaction involves the broad, underlying right of these railroads to combine in matters of interstate commerce and in connection with the perpetual 65% contracts, is the real gist of the controversy.

The specific relief asked for in the Government's brief in that regard is: "Fifth. That the Temple Iron Company is a combination of the defendants, Reading Company, the Central Railroad of New Jersey, Lehigh Valley Railroad Company, the Delaware, Leckawanna & Western Railroad Company, Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, in restraint of trade and commerce in anthracite, in violation of the said Act, and every such defendant, and any subsidiary company or agent of either is enjoined from voting the stock of the Temple Iron Company, from receiving any dividends or other profits arising therefrom, and
768 from exercising any control over the same." This is based on subdivision *d* of paragraph VII, and is a condensed form of the fifth prayer of the bill which, inter alia, is that the Simpson & Watkins collieries were acquired by the defendant railroads in pursuance generally of the combination charged in paragraph VII, "and specifically in pursuance of a combination or conspiracy between the defendants last named to defeat the construction of a competing railroad from the anthracite fields to tide water, in violation of the aforesaid Act of July 2, 1890."

A brief preliminary account of anthracite mining and marketing methods is helpful to an understanding of the case. We have seen that the sole means of transporting anthracite to market is by rail; that the defendant railroads, through the agency of their subsidiary coal companies, are themselves interested in mining coal, and in purchasing the coal produced by other mining companies and individuals, and in the sale of the same. The coal sold by the outside producer to the subsidiary coal companies is paid for on a percentage of the price coal commands at New York Harbor. Originally the coal producers' percentage of this was 40%, but from time to time it has been increased to 65%. The remaining 35% is the defendant railroads' share, which covers freight, selling expenses and profit. The adjustment of these percentages has been a constant ground of contention between producers and railroads. An increase thereof has been urged by the former because of the greater cost of mining due to exhaustion, which compels a resort to deeper levels, and added expenses caused by pumping water therefrom; raising of miners' wages;
shorter hours of labor; expense incident to safety laws, pre-
769 vention of fires and explosions; and finally to the high grade of coal preparation demanded by the public. It is, of course, also contended by the producers that the percentage retained by the defendant railroads gave them an undue freight rate. Without entering into a discussion of the merits of these contentions, it is to be noted that the difficulty that confront both railroads and producers in the proper adjustment of their relative rights, and wholly without

fault on the part of either, is complicated by the public market demand that the coal be prepared for use in such form as will meet the somewhat exacting demands of the purchasing public. In buying coal the public does not base its requirements so much on the real worth in heat units of the coal as on size and appearance. For example, the first breakage of coal which results in grate size is necessary. But the public demands a second breakage into smaller sizes, which is very expensive. Thus Mr. Sturges, a Government witness, says:

"The expense of mining and preparing coal is very greatly added to by two requirements in our contract; the one compelling the breaking of our coal twice. There is a terrible loss on each breakage. The first breakage is necessary * * * you cannot take those immense chunks of coal that come out of the mine and sell them in that way. That breakage reduces them to grate. If they could remain of the sizes made by the first breaking I think that coal could be sold at a profit 10 per cent. cheaper than it is to-day. The public will not take it, though; it has to be broken again. The dust, so far, is unsalable, although it is the purest of carbon."

Just what this requirement practically amounts to in dollars and cents Mr. Fuller shows:

"I could give you an approximate idea as to the less price
770 received for coal by breaking it down * * * One test we made was by taking 200 tons of grate coal, large coal, and breaking that down. The reason was that the market had got to a condition where it would not take grate coal. Figuring that coal on a basis of the price which was quoted at that time on that size, say $2. a ton, and breaking that coal down, which gave us the smaller sizes and culm, there was a loss of about $71. on the 200 tons."

The operators who sold their coal at the breakers to the subsidiary coal companies received, as we have said, for some years 50% and then 60% of tide-water price. This left the carriers 50% and then 40% for freight and selling expense. The operators claimed the carrier received an undue share for freight, etc. and contended for a 65% rate.

The proofs show that in the early part of 1899 from eight to nine millions of operators' tonnage, which had been tied up on seven year contracts with the subsidiary companies at 60% would expire. With a view to availing themselves of this fact, a number of operators in 1898 organized the New York, Wyoming & Western Railroad Company, which was empowered to build a line from the Susquehanna River near Pittston, the heart of the Wyoming region, to a point on the Delaware River opposite Belvidere, New Jersey. Its capital was subscribed for by independent operators, who pledged to it some five hundred thousand tons of output. Among its supporters was the partnership of Simpson & Watkins, which owned the controlling shares of eight collieries in the Wyoming region with a production of 1,300,000 tons, of which 500,000 tons were released by contract expiration. Mr. Sturges, the President of the road, testified that it was projected, "the same as all other organizations and movements of

the independent operators, in the hopes of bettering their con-
771 ditions, securing lower rates and a better market for coal—in fact, better net results for their business." Apart from the projected road's competitive effect in depriving the defendant railroads of the tonnage it might take from some of them, its retention of 35% instead of 40%, to cover its freight, etc., for it proposed increasing the operators' price from 60 to 65%, would have an unsettling effect on the tariffs of the other railroads. Its tendency would seem to be to cause competition among, as well as with, the defendant railroads themselves. We have seen that the northern division was served by eight railroads, whose tributary territory might be affected by the entrance of this ninth railroad. Moreover, at its eastern end at the Delaware River, the new road might make three of these defendant railroads, namely, the Delaware, Lackawanna & Western Railroad Co., the Lehigh Valley, and the Central Railroad of New Jersey, as well as the Pennsylvania Railroad Company, competitors for its freight to tide. It is now contended this new road was a paper project and would never have been built, and that even if built, its charter would only carry it to the border of Pennsylvania. But it is evident not only from what the defendant railroads actually did to prevent its construction, but from what they themselves say, that it was a possibly strong competitive factor to tide-water, the elimination of which was necessary to preserve a non-competitive status among these defendant railroads, the lines of several of which might be used as a connecting line to tidewater from the terminus of the projected road. Mr. Thomas, then President of the Erie and the New York, Susquehanna & Western, and now President of the Lehigh Valley, testified in that regard as follows:

772 "A. * * * Simpson & Watkins, who were shippers on the line of the Erie and Lehigh Valley roads, as well as the Ontario & Western—— Q. The Lackawanna also? A. Yes, they were shippers on the Lackawanna. They were, as usual, dissatisfied with the rates, thought they should have lower ones. We declined to lower the rates; they were reasonable. They got a lot of tonnage together, their own and that of other shippers, and threatened to build another road to the Delaware River opposite Easton. * * * Q. You understood at that time that the Simpson & Watkins' properties and those that were associated with them were seeking a market? A. I did. Q. And that the tonnage that was then tributary to the Erie Railroad might get away from it to some other railroad? A. There was every prospect that it would. Q. To either an existing railroad or some new railroad? A. Yes. Q. And it was the possibility of the loss of that tonnage that induced you to go in, as an officer of the Erie Railroad, to the Temple Iron Company transaction? A. It was. Q. And to protect the Erie Company? A. Yes sir. Q. As to the Lehigh Valley, what were the motives that caused the Lehigh Valley to go into it? A. I do not know what their motives were, but I assume they were the same as mine. Part of the mines were on their lines and I assume that they wanted to retain the tonnage they had. Somebody would have bought those properties,

and it was better to buy them jointly and allow the tonnage to go to the roads that had formerly carried it, than otherwise."

These and other proofs that might be cited make it clear that the New York, Wyoming & Western Railroad Company threatened competition in the anthracite interstate trade in buying, carrying and selling coal, and that which follows shows that such competition was defeated by a combination of the defendant railroads, which
773 combination used the Temple Iron Company, a Pennsylvania corporation, as its instrument to preclude competition. This was done by the defendant railroads through such holding company buying the Simpson & Watkins' interests. The negotiations for such purchase were conducted by Mr. Simpson and by Mr. Bacon of the firm of Morgan & Company, Mr. Maxwell, then President of the Central Railroad of New Jersey, Mr. Thomas, then President of the Erie, and Mr. Twombly, then a director of the Philadelphia & Reading Railway Company and who was also financially interested in the Simpson & Watkins' interests, all being present. Mr. Simpson's testimony is:

"Q. When did you and Mr. Watkins sell out the interest in the collieries which you controlled to the Temple Iron Company? A. 1898 or 1899; I am not certain; nine or ten years ago. Q. Were you actively engaged, you personally, in the negotiations which led up to that sale? A. Yes, sir. Q. With whom did you negotiate? A. Robert Bacon, Esq. Q. Who is Robert Bacon, Esq.? A. A member of the firm of J. P. Morgan & Company. Q. What did J. P. Morgan & Company have to do with the Temple Iron Company? A. Nothing that I know of. Q. What was Mr. Bacon's relationship to the Temple Iron Company? A. I was asked what I would take for the collieries and we met one afternoon and Mr. Robert Bacon was there. I did not know whom he represented. The Temple Iron Company charter was bought afterwards and we paid for it. Q. You met Mr. Robert Bacon somewhere? A. Yes. Q. Where was this? A. In Mr. H. McK. Twombly's office. Q. Where was that office? A. Mills Building here in New York City. Q. You met there Robert Bacon of the firm of J. P. Morgan & Company? A. Yes, sir. Q. And he inquired what you would take for your collieries? A. Yes, sir. Q. Did you tell him? A. Yes, sir. Q. Follow the negotiations along? A. I told him. Q. Then what happened? A. He
774 thought it was too high, and we discussed it, and we said we would not take anything less. We said, 'We have forty million tons of coal in the ground and we have a capacity of 7,500 tons a day. We can mine it for so much a ton and we will have so much money for it. We have got so much invested in improvements. If our figures about improvements are not right, we will take off half a million dollars.' He said: 'Would you be willing to submit to a technical examination'? We said: 'No, we will not. We will get up our figures and show them to you, and if you do not like it you need not take it. If we haven't got that much money invested we will take off half a million dollars.' On that basis we showed our figures and they took it. The Temple Iron Company we did not know anything about. Q. When these negotiations were going on with Mr.

Robert Bacon, you knew nothing about the Temple Iron Company? A. No. Q. It was with Mr. Robert Bacon of this firm of bankers here in New York City, that you had the negotiations and it was to him that you showed these figures? A. Yes, sir. Q. Did he accept the proposition? A. I don't know that I showed him the figures, but I furnished the figures and somebody showed them to him. The deal was consummated. Q. Did Mr. Bacon accept your proposition? A. Somebody gave us the money. Q. I want to know where you and Mr. Bacon came to an agreement, if such a thing happened? A. Really I never saw him afterwards. Q. Whom did you see after that in connection with this matter? A. Nobody, except we went to the Guaranty Trust Company and got our money. Q. You did not know who supplied it? A. No. Q. Did the Guaranty Company pay you in cash? A. Check, and I very gladly endorsed it. I am awfully sorry now I took it. Q. You do not know whom Mr. Bacon represented? A. No. Q. You had not heard of the Temple Iron Company up to that time? A. No, sir. Q. What was your
775 first information about the Temple Iron Company? A. I understood they had a charter that you could do almost anything under except commit murder, and they bought it for that purpose. Q. Who bought it? A. This crowd that was to buy our collieries. I do not know who bought it. Q. Did you have anything to do with the purchase of the charter? A. We paid for it. Q. Who is 'we'? A. Simpson & Watkins, and our other partners paid one hundred and fifty-one thousand dollars for the Temple Iron Company charter. Q. Simpson & Watkins bought the Temple Iron Company charter? A. I mean the crowd. I am not saying Simpson & Watkins did it but we thought it was a good charter and we bought it and used it. Q. Who was it that wanted it? A. I do not know. Q. For whom were you acting when you bought the charter of the Temple Iron Company? A. That was part of the deal. Q. Understood between you and Mr. Bacon? A. No, we thought we had a good charter and we would finance the company and turn in the stock, and we paid in a hundred and fifty-one thousand dollars for the charter and gave them four hundred and odd thousand dollars working capital and we took stock and bonds. Q. Who paid that hundred and fifty-one thousand dollars? A. I suppose it was paid out of what might be called a syndicate. Q. You do not know who the other members of the syndicate were? A. No. Q. Were you at any time President of the Temple Iron Company? A. Never. Q. Was Mr. Watkins? A. Yes, sir. Q. When? A. When it was formed and took over this property. He was President for one or two years. Q. What was the business of the Temple Iron Company prior to the time it was bought out by you gentlemen? A. It owned a little pig iron furnace. Q. Down in Reading? A. Near Reading. Q. What was the object of buying up that charter? A. Because it had a broad charter. Q. The purpose was to get the use of
776 that charter? A. Yes. Q. Do you know what the capital stock of the Temple Iron Company was at that time? A. At that time. Q. Yes, sir. $240,000, do you remember? A. I do not know. Q. You paid $151,000 for it. A. Yes. Q. Was the stock

then increased with your concurrence and active assistance? A. Surely. Q. To what point? A. I think $6,000,000. Q. Did you take stock in it for your collieries or were you paid cash for the collieries? A. We took stock and cash and bonds."

Mr. Baer, President of the Reading, states he first heard of the purchase through Mr. Coster, a member of Morgan & Company, and his account is this:

"Mr. Coster, who was on the Executive Committee of the Reading Company, was exceedingly anxious that the Reading Company should join in the purchase of those properties. The purpose of it was to help the Erie; the situation was a financial one really. J. P. Morgan & Company had reorganized the Erie Railroad. They had just a year or two before taken hold of the Lehigh Valley. I had been their counsel and made the mortgages for the Lehigh Valley and fixed up that loan, called the general mortgage or consolidated mortgage, I have forgotten which. The Reading had just been taken out of the hands of the Receivers and when these collieries were offered for sale in New York the Erie people became very much alarmed. They were afraid of losing that tonnage and, although it seemed to be tied to them, they argued that they might lose the tonnage and the Lehigh Valley would lose the tonnage and that would seriously affect those properties and the general financial condition of the country, so that our stock would be affected and all other stocks would be affected for the time being, that it would be a disturbing factor. I protested personally that I could not see anything in the suggestion of building that railroad. I did not see that it would amount to anything. I did not believe in it at all. It did not go to the New York waters and I did not see how they could get coal to New York Harbor or to any other terminals so that they could be a serious factor. To that the answer simply was that the mere threat of doing that would affect Erie securities and affect all the rest of us. * * * In the meantime the New York parties concluded that in some way they would take these collieries, whether we went in or not, and then I was called upon again to see in what way, if they did take them, a holding company could be created. The usual suggestion was made in New York that they become a Jersey corporation; but as a Pennsylvanian I had been adverse to New Jersey getting jurisdiction over Pennsylvania property and I have always tried in my business and in my practice to have Pennsylvania corporations hold Pennsylvania properties. I think it is wiser and better to have the governmental jurisdiction where the property is. I got thinking over it and just about that time my co-stockholders in the Temple Iron Company were very tired of the business and so was I. It just occurred to me that that charter was the very one that would answer this purpose, and I sent for the Messrs. Smith and asked them whether they would sell their stock, and they said they would, at a figure that they named; and there was Frank Smith and Borden who had a few shares, a small interest in the company, and they all agreed. After finding we could do that, I told the Reading people that the advantage to the Reading Company would not only be in having an interest in these coal properties,

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which were reported very valuable by this committee, but that it would insure the continuance of that Temple Furnace on the line of the Reading road, and that I was not sure that we would continue it long, that I was too busy to be bothering with running an anthracite furnace. It was very important; how important it is you may
778 understand when I say that a furnace on a railroad is about the best freight producing plant that you can have. That iron furnace pays over on the average about $30,000—probably higher than that—a month freight on the inward freight alone. The consumption of coal, of limestone and ore, that we call the raw materials that go into a furnace for the smelting of iron creates a great many tons, and, whilst the rates are not very high on those raw materials the tonnage is very heavy. We finally agreed on the part of the Reading Company that if the New York friends, Coster, insisted upon it, we would join them on one other condition, namely, that we should go in the syndicate. I thought that probably there might be some money made in the syndicate, and there was, of course.—I mean that the bonds were sold at a figure that was tempting * * * Then we agreed simply to take the Simpson & Watkins collieries and the question came up of guaranty. These people that were selling and the bankers who were to handle the bonds wanted what we called a joint guaranty. I did not want a joint guaranty with some of the companies that I did not think were quite as strong as we were and the Executive Board of the Reading, Mr. Harris and Mr. Welsh and Mr. Dickson, sustained me in that. Then the question was how to fix up the guaranty. I suggested that we take the tonnage of each of the companies that had gone in for the preceding year and divide that up and make that the percentage that each was to guaranty. By Mr. Reynolds: Q. The anthracite tonnage? A. The anthracite tonnage, and divide it up and that fixed the percentages. That was reported to the different presidents, and I suppose their boards took action; I do not know. They are all separate agreements. That is a matter of record."

The transaction was then carried out as theretofore arranged as
779 follows: On January 26, 1899, the capital stock of the Temple Iron Company having been purchased as noted, its stock was raised to two and a half millions and its bonds issued for three and a half millions. On February 27th, Simpson & Watkins conveyed to it the capital stock of the eight collieries, taking in payment $2,260,000 of its capital stock and $3,500,000 of the bonds. On the same day they transferred to the Guaranty Trust Company, as trustee, this $2,260,000 of stock and $2,100,000 of bonds, and received therefor $3,238,396.66 in cash and certificates of beneficial ownership in $1,000,000 of the stock, the trustee purchasing from Mr. Baer for $151,603.34 the remaining $240,000 of original shares of the Temple Iron Company. On the same day, as part of the plan, the Reading Company, the Central Railroad of New Jersey, the Lehigh Valley Railroad Company, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, severally contracted with the Guaranty Trust Company and the Temple Iron

Company to buy at par 29.96 per cent., 17.12 per cent., 22.88 per cent., 19.52 per cent., 5.84 per cent., and 4.68 per cent., respectively, in all 100 per cent., of the capital stock of the Temple Iron Company, and to guaranty the same percentages of its funded debt, principal and interest. These percentages, as testified to by Mr. Baer, were arrived at on the basis of the respective anthracite tonnage of the several roads as quoted above. At the same time it was covenanted that if in any period of six months the earnings of the Temple Iron Company should be insufficient to provide for its sinking fund, the interest on the bonds, and its "stock reserve" charge, the carrier-guarantors should pay the Trust company up to 12½ cents per ton on every ton of coal carried by them from the mines of the com-
780 pany, and if there still remained a deficit, it should be paid by the carrier-guarantors in the proportions noted above. Subsequently, on April 12th, each carrier entered into a supplementary contract with the Trust Company, to enable the latter "to take such action as may be necessary to enforce the terms of guarantee and the other covenants of said agreement of 27th of February, 1899, so as to work out equitable results and protect and safeguard the rights and obligations of * * * the several guarantors in the event of the failure of * * * any one or more of the guarantors to comply with the terms of any such guarantee and to keep and perform the covenants in any such agreement."

The consummation of this plan effectually defeated the project of the new railroad and led to its abandonment and it is to this the witness Sturges refers in his testimony: "A few months afterwards, I cannot give the exact dates, a number of these collieries pledged to our road, or rather the stock in a number of these companies, and the collieries too, were sold. I only know to whom by hearsay, except in one case. That, of course, absolutely crippled our road."

Does this combination of all of the defendant railroads for the avowed purpose and with the effect of preventing the threatened building of a competitive road for the transporting of coal in interstate commerce fall within the ban of the statute? That the Temple Iron Company is a mere holding company, the instrument for effecting the purpose of the combination, is apparent from the proof, and indeed, as we have seen in the testimony of Mr. Baer, is conceded. The ownership of its stock was and is now in the defendant railroads, the Temple Iron Company being a mere convenient, unitary
781 holding agency for joint, combining railroad interests. If this combination, which the proofs show was made by all these defendant railroads, is not within the prohibition of the statute, what legal bar is there to these railroads, through the agency of the Temple Iron Company, jointly and in combination, absorbing the remaining anthracite coal not now owned by their subsidiary coal companies? There is none. The gist of the statute is combination; combination "in restraint of trade or commerce among the several states." Indeed there is a potency in the united members of a combination so far in excess of the aggregate of the separate disunited strength of its members that the law, apart from this statute, has not overlooked it. In Morris vs. Barclay, 68 Pa. St. 173, the Supreme Court of Pennsyl-

vania referring to a combination affecting a single region only of the bituminous field, which covers many thousand miles where the anthracite covers a few hundred, said:

"The effects produced on the public interests lead to the consideration of another feature of great weight in determining the illegality of the contract, to wit: the combination resorted to by these five companies. Singly each might have suspended deliveries and sales of coal to suit their own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed everyone in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others. * * * Men can often do by the combination of many what severally no one could accomplish and even what, when done by one would be innocent. * * * There is a potency in numbers when combined which the law cannot overlook, where injury is the consequence."

782 And it will be observed that it is the calling of this combination into existence the law strikes at, without awaiting the exercise of its powers. "It is no answer," said the Supreme Court of Ohio, in Central Company vs. Guthrie, 35 Ohio St., 666, "to say that competition in the salt of trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted on the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public." The purpose and effect of the combination of these defendant interstate railroads and of the defendant subsidiary coal companies would seem, therefore, to bring this transaction within the doctrine of the Northern Securities case, 193 U. S., 197, 331, where it was said: "That every combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in interstate trade or commerce, is made illegal by the act," for the statute covers all combinations in restraint of interstate trade, whether by way of transportation or otherwise. It is no answer to this to say the Temple Iron Company has corporate power to hold the stock of mining companies. Concededly it has. The law forbids not the use, but the abuse, of the corporate powers of this Pennsylvania corporation. The question before us is not whether the Temple Iron Company had corporate power to own mines and mining stocks, but whether these six railroad companies have made the lawful corporate power of the Temple Iron Company to hold mines and mining companies' shares, an instrument to enable them to jointly combine "in restraint of trade or commerce among the several states." If so, the act makes the combination unlawful without reference to the

783 particular means used to effect the unlawful end. Indeed, to the contention that the Temple Iron Company was simply exercising its legal corporate powers it may be replied, as it was in Aikens vs. Wisconsin, 195 U. S. 194, and reiterated in Swift vs. United States, 196 U. S. 396: "It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan

may make the parts unlawful." And, of the office of this holding Temple Iron Company it may be here said, as was of the combination using the Northern Securities Company in that case, that it is one which, "restrains interstate commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them." So also, in Harriman vs. Northern Securities Company, 197 U. S. 291, the court in speaking of the Northern Securities case and that company said: "Some of our number thought that as the Securities Company owned the stock the relief sought could not be granted, but the conclusion was that the possession of the power, which, if exercised, would prevent competition, brought the case within the statute, no matter what the tenure of the title was."

But—it is urged, that because these eight collieries sell their product at the breaker, the transaction is wholly an intrastate act, and under United States vs. Knight, 156 U. S. 1, the act does not apply. Let us look at the kernel and not the shell of this transaction. The stock of the collieries which sell is owned by the Temple Iron Company and the stock of the Temple Iron Company is owned by the defendant railroads. The latter are therefore the real sellers. And who are the real purchasers at the breaker?—the defendant coal companies whose stock is owned by the defendant railroads.

784 And for what purpose do these latter buy this coal from themselves but to transport and sell the major part in interstate commerce? That the major part was interstate commerce the proofs show. Mr. Simpson of the firm of Simpson & Watkins says, referring to such product:

"Q. Where did you sell it when you sold it yourselves? A. In the general market—New York, Oswego, Buffalo—wherever we could get a market for it. * * * Q. What was your principal market while you were operating independently and selling in your own independent way? A. New York was the principal market. * * * Q. And with whom were you in competition in the markets in New York City and in other parts of New York State when you were selling coals on your own account? A. Everybody that was in the business. Q. Your principal competitors then were either the anthracite coal carrying roads, operating in their own name or operating through coal companies which they controlled. A. The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, and the Ontario & Western Railroad Company through Dickson & Eddy, their sales agent."

To the same effect is the testimony of E. B. Thomas, President of one of the carrier roads:

"Q. Where was the coal from the Simpson & Watkins' collieries moving at that time? A. Moved over all of those roads? Q. Where? To what point? A. All over, wherever they could find a market for it. Q. Was it coming to tide water? A. Some of it came to tide water. Some of it went west to different points."

And that railroad carriers are "instruments of commerce and their business is commerce itself," was held in United States vs.

785 Trans-Missouri Freight Assn., 166 U. S. 290. So while in isolation this is a sale of the coal at the breaker by one cor-

poration to another corporation—a local transaction—yet in combination it is but one of the elements in a chain whereby the six defendant railroads handle their joint product in interstate trade—a product which might otherwise have gone to this projected road. The several acts which contribute to the final result must be judged not in isolation, but in combination. For, while it is said in the Addyston Pipe case, 175 U. S. 211, that, "Where the contract affects interstate commerce only incidentally and not directly, the fact that it is not designed or intended to affect such commerce is simply an additional reason for holding the contract valid and not touched by the Act of Congress," it was also held that, "any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation and delivery of an article of interstate commerce, by preventing or restricting its sale, etc., thereby regulates interstate commerce to that extent and to the same extent trenches upon the power of the National Legislature and violates its statute."

It is manifest, therefore, that while in corporate forms there are sales, corporate holdings, etc., which in isolation may be intrastate, the fact is equally clear that when combined the transaction as a whole falls within the domain of interstate commerce. For, as was said in Loewe v. Lawler, 208 U. S. 301:

"Although some of the means whereby the interstate traffic was to be destroyed were acts within a state and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out."

786 Singly and uncombined these six defendant railroads may continue their lawful operations with that natural, untrammelled competition incident to individual rivalry; for, as we have seen above, "when competition is left free, individual error or folly will generally find a correction in the conduct of others". But it is when and because they unite—for the words "contract", "combination", "conspiracy", imply a coupling with others—and when that coupling is "in restraint of trade or commerce among the several states", that the federal statute becomes applicable.

It appears then by the proofs:

First. That the construction into the anthracite region of an additional competitive carrier of interstate commerce, the New York, Wyoming & Western Railroad, was threatened and feared.

Second. That the product of Simpson & Watkins's eight collieries entered largely into interstate commerce, and the diversion of this product and other interstate commerce was promised to and threatened to be divided by such new road.

Third. That the six defendant railroads combined to prevent the building of the competitive road, and the possible diversion of interstate commerce by the reorganization of the Temple Iron Company and the joint ownership of its stock; by purchasing through such company the stock of the Simpson & Watkins collieries, detaching such collieries from the support of the proposed road, thereby causing

its abandonment and later removing the interstate product of such collieries for all time from the field of interstate freight competition, as they did in some cases when the perpetual 65% contracts were later agreed upon.

787 To us it is therefore clear that the combination of these six defendant railroads in the Temple Iron Company, was a combination "in restraint of trade or commerce among the several states", and falls within the prohibition of the statute.

We are next brought to consider whether certain contracts, known as the 65% contracts, entered into between these railroads, through their subsidiary coal companies, with mine owners who are parties to this bill, were also, "in restraint of trade or commerce among the several states". This part of the case is covered by the second ground of relief, set forth in the government's brief, which is as follows:

"That the sixty-five per cent. contracts, so called, made by the defendants, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Valley Coal Company, the Delaware, Lackawanna & Western Railroad Company, and Hillside Coal & Iron Company, with the various producers who are before the court for the control of their output, are in violation of the said Act, and that all parties thereto respectively, are enjoined from further carrying them out";

being charged in clause *a* of paragraph VII of the bill and relief for which is asked in the petition's second prayer for relief.

The proofs before us show and the Supreme Court in Interstate Commerce Com. vs. Baird, 194 U. S. 42, held, that these contracts involved interstate commerce. The length of this opinion will not permit reference to the testimony, but it shows that the terms of these contracts were agreed upon by the joint action of the

788 six defendant railroads, their subsidiary coal companies and mine owners, and that all of said persons and companies were concerned in and were thereby affecting interstate commerce. The form of contracts being thus agreed upon, they were thereafter entered into by individual mine owners and the subsidiary coal companies of the six defendant railroads on whose lines the mines were located. Under each of these contracts the entire product of a particular mine was sold until exhaustion to one of the subsidiary coal companies at the breaker, and shipments therefrom were only to be made as that company required. Not only had the owner no power to mine except as the buyer required, but he had nothing to do with fixing the price which was determined by the general tidewater rate. Save in operation the mine was practically owned by the subsidiary coal company, the only guarantee of production the operator had was that the coal company agreed "it will not discriminate in favor of its own mines, or that of any persons, firms or companies with which it had contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers." It further appears that where similar contracts had been limited to seven years, as they usually had been up to that time, they had not pre-

cluded competition. Indeed, the expiration of such seven-year contracts had made possible the projection of two carrier roads, and the testimony shows that the perpetuity clause was insisted on and inserted in the contracts thereafter by the combined action of the defendant railroads and their coal companies in order to withdraw from competition for all time the freights of these
789 producers. The result of the combination was the operators got a raise to 65%, and the defendant railroads eliminated competition. It would therefore seem clear that the product of these mines, which had before entered into competitive interstate commerce was withdrawn therefrom, and such being the case it follows that the instrument by which this was done, to wit, the contracts entered into in pursuance of joint action was a combination, "in restraint of trade or commerce among the several states". It is contended, however, the right of contract is a personal, absolute one, and if a mine owner and a carrier agree thereto the law cannot interfere. But the answer to this is, we are here dealing with a combination, a combination of interstate carriers and owners of a product entering into interstate commerce, and when such is the case, even the right to contract and combine must give way to a statute which declares that such contracts and combinations where "in restraint of trade and commerce among the several states" are illegal. It is but just to say that taking into consideration all the factors involved in ownership, mining transporting and sale of coal, these contracts may on the whole be as fair, reasonable and satisfactory a solution of the intricate economic questions involved as can be worked out. To quote from the testimony of an operator of long experience and broad-minded view.

"Q. Why did you think the railroads ought to purchase the individual operators' coal?

A. I thought that was the best way to handle the business. Understand that anthracite coal is a domestic fuel and it is used in the winter time, and to get the dealer and the consumer to buy it through the summer time you have to give them some inducement. I talked to the railroad people a good many years. I said: 'The thing you ought to do is to buy the individual operators'
790 coal at the mines on some agreed system, or price, or something of that kind, because we cannot induce the consumer to take our coal in the summer time, and give the men full work through the summer time. We cannot get the dealers to stock up and we cannot afford to have yards and agencies all over, as you can' ".

But conceding the fairness, as we have said, of these contracts, the fact still remains they are at variance with the adjudged intent of the statute to maintain in interstate trade an untrammelled flow of commerce in obedience to free and unrestrained competition. That these contracts do restrain commerce is clear from their terms and effect, and if they do not fall within the ban of a statute "aimed", as was said in Chesapeake & Ohio Fuel Co. v. United States, supra, to "maintain interstate commerce on the basis of free competition", then that statute is made of no avail by contracts which

shut out competition for all time, and which if increased in number, may without absolute purchase and ownership, end in the defendants' railroads' acquisition of the remaining coal area. We are therefore of opinion these contracts, as they now stand, are illegal.

Seeing, then, that these six defendant railroads did unlawfully combine together, through the Temple Iron Company, and that thereafter in further combination they brought about these illegal perpetual contracts, the duty of the court seems clear to forbid them further maintaining their unlawful combination in the Temple Iron Company and from continuing these unlawful contracts. For if the Temple combination was illegitimate in birth, when did the taint of illegitimacy leave it? The Anti-Trust Act, as it seems to me, is directed not only at the illegal acts an illegal combination
791 does, but also at the existence and continuance of such illegal combination. Moreover, in this case it is not only because the combination in the Temple Iron Company was originally illegal, but because it can be used in the future as it has been in the past, and because its existence to-day tends to forbid, prevent and restrain competition, that this court should decree such illegal combination should end. And this case exemplifies need of such a decree. Following the absorption of the stock of the Simpson & Watkins collieries by the Temple Iron Company the product of some of those collieries was, when the sixty-five per cent. contracts were afterwards determined on, bound in perpetuity to certain of these carriers through such contracts. By such perpetual contracts these defendant railroads through their subsidiary coal companies severally made with other collieries these combiners withdrew and still continue to withdraw, such product, for all time, from competition, either in interstate transportation or sale. To my mind there is no more subtle and effective agency for the gradual, unnoted absorption by interstate carriers of the remaining interstate product than these perpetual contracts. Holding then that they are in the words of the statute "contracts * * * in restraint of trade or commerce among the states", I record my dissent to the action of the court in refusing to enjoin them.

792 LANNING, *Circuit Judge*

The Government charges in its petition that the defendants have entered into a series of combinations or conspiracies in violation of sections 1 and 2 of "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, hereinafter called the anti-trust act. The allegations are that these combinations or conspiracies restrain interstate commerce and monopo-
793 lize a part of such commerce in the sale and transportation of anthracite coal mined in the Wyoming region of Pennsylvania. The petition contains, in addition to the usual general prayer for relief, five specific prayers for the destruction of five of the combinations described. These combinations are: (1) The one by which, in 1898, the Erie Railroad Company, through an increase of its capital stock, acquired the capital stock of the New York, Susquehanna &

Western Railroad Company; (2) the one by which the Temple Iron Company, in 1899, through an increase of its capital stock and an issue of bonds, acquired the capital stocks, assets and properties of what were known as the Simpson and Watkins coal companies, and by which the Reading Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna & Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company simultaneously entered into contracts for the acquisition of the capital stock of the Temple Iron Company; (3) the one by which, in 1901, the Reading Company, through an increase of its capital stock and bonded indebtedness, acquired the capital stock of the Central Railroad Company of New Jersey; (4) the one by which, in 1900, and subsequent years, the defendant carriers and their subsidiary coal companies agreed in a series of contracts known in the record as the 65 per cent. contracts, to purchase from certain other coal companies all the anthracite coal thereafter produced by the collieries of the latter companies; and (5) a combination or conspiracy, alleged to have been formed in 1895 by the defendant carriers and their subsidiary coal companies for the control of interstate commerce
794 in anthracite coal, and in the development of which it is further alleged the four preceding combinations and one other (the one by which, in 1899, the Erie Railroad Company acquired the capital stocks of the Pennsylvania Coal Company and the Delaware Valley & Kingston Railroad Company) were used as "steps."

Two preliminary matters should be first disposed of—one a motion to dismiss the petition on the ground of multifariousness, and the other a motion to strike out certain parts of the proofs offered by the United States and objected to by the defendants.

Twenty of the defendants have raised, either by way of objections embodied in their answers or by simple motions to dismiss, the defense of multifariousness. This defense was not brought to the attention of the court until after the United States had concluded its testimony in chief. The court then postponed its consideration until the final hearing. It is clear, however, that the defendants who insist upon this defense stand in no better position now than they did when they first brought the matter to the attention of the court. It is the general rule of practice in courts of equity that a defendant loses his right to insist upon an objection that a petition or bill is multifarious unless he raises that defense by demurrer or plea or answer filed specially for that purpose. He cannot, by answering generally and omitting to plead or demur, require a complainant to take his testimony and then after the expense of taking such testimony has been incurred, insist, as a matter of right, upon multifariousness as a defense. Such a defense is not to the merits of the case but to the form of the suit. It follows, therefore, that as a rule if it is possible for the court, where the defense of multifariousness is not regularly presented in one of the ways above stated, to
795 make a decree which shall properly dispose of the issues involved, the petition or bill will not be dismissed. Veghte v. Raritan Water Power Company, 19 N. J. Equity, 142; Annin v. An-

nin, 24 N. J. Equity, 184; Bunnell et al. v. Stoddard, et al., Fed. Cas. No. 2,135; Oliver v. Piatt, 3 How., 332, 411; Nelson v. Hill, 5 How., 126, 131; Hefner v. Northwestern Life Insurance Company, 123 U. S., 747, 751; Graves v. Ashburn, 215 U. S., 331. Assuming that the petition is multifarious and that the defense might have been sustained on a simple demurrer, there is no difficulty, except that of examining the evidence as to the several issues involved, in disposing of the case and entering a decree consistent, as we think, with its ... ties.

The motion to strike out proofs relates to certain exhibits and testimony. It is not necessary to pass upon this motion for the reason that, whether the proofs be in or out, the conclusions expressed in this opinion, at least, will remain the same.

Before entering upon a consideration of the nature and effect of the combinations here complained of, it may be well, also, to recall some of the expressions of the Supreme Court as to the kind of combinations that are condemned by the anti-trust act. "The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate." Hopkins v. United States, 171 U. S., 578, 592. "Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement
796 were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object." Anderson v. United States, 171 U. S., 604, 615. "An Agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce." United States v. Joint Traffic Association, 171 U. S., 505, 568. "The purpose of the act of July 2, 1890, was to prevent the stifling and the substantial restriction of competition in interstate and international commerce. The test under that act of the legality of a combination or conspiracy is its direct and necessary effect upon such competition. If its necessary effect is but incidentally or indirectly to restrict competition, while its chief result is to foster the trade and increase the business of those who make and operate it, it is not violation of this law." United States v. Standard Oil Company, 173 Fed., 177, 188. "If the necessary, direct and immediate effect of the contract be to violate an act of Congress, and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into.

In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant
797 that it was not designed." Addyston Pipe & Steel Company v. United States, 175 U. S., 211, 234.

1. Coming to the merits, the first question to be considered is, Was the acquisition, in 1898, by the Erie Railroad Company of the capital stock of the New York, Susquehanna & Western Railroad Company effected by a combination or conspiracy in restraint of trade or commerce among the several states, contrary to the provisions of section 1 of the anti-trust act, or promotive of a monopoly of any part of the trade or commerce among the several states contrary to the provisions of section 2 of that act?

On March 11, 1898, the Erie Railroad Company obtained from the New York, Susquehanna & Western Railroad Company a lease of the latter company's railroads, dated February 24, 1898, for the term of one year from March 1, 1898. The lease set forth, amongst other things, the purpose of the Erie to increase its capital stock by adding thereto $13,000,000 of first preferred and $13,000,000 of common stock and exchanging it, at the rates therein mentioned, for stock of the Susquhenna. On April 2, 1898, the legislature of New Jersey consented to this lease. Between March 18 and June 30, 1898, the Erie Railroad Company acquired substantially all of the capital stock of the New York, Susquehanna & Western Railroad Company by exchanging its $26,000,000 of stock for the stock of the Susquehanna.

It is alleged in the petition that the Erie and the Susquehanna operate substantially parallel, and, in the absence of a restraining agreement or combination, competitive lines of railroad between the anthracite coal regions in Pennsylvania and tide water points at New York harbor, and that the Erie, by issuing its addi-
798 tional stock to the amount of $26,000,000 and exchanging it for the stock of the Susquehanna, brought the two formerly competitive railroad companies and their subsidiary coal companies under a common head and source of control and thereby, in violation of the anti-trust act, removed all inducements for competition between them and established a monopoly in interstate transportation and sale of anthracite coal. The answer of the Erie denies that the two companies were ever in a true sense competitors, or that it has in anywise violated the anti-trust act, and avers that the Erie is one of the greatest carriers of western produce, that the Susquehanna has no such traffic, that both of the companies are carriers of anthracite coal to New York but from different sources of supply, that the Erie has a great freight and passenger business, that its terminal facilities at New York harbor are inadequate, that the Susquehanna has larger tunnel and yard facilities at New York harbor than it needs, and that the acquisition of the Susquehanna by the Erie enabled the Erie to use the tunnel and yard facilities of the Susquehanna. The answer of the Susquehanna also denies that the two companies are competitors for the transportation of coal, or that any competition between the two companies has been prevented or interfered with, or that the

price of coal has by any of its agreements been in any manner controlled, and avers that the purchase of the stock of the Susquehanna by the Erie was made within the state of New York, that it was not in restraint of interestate trade or in violation of the anti-trust act, that, at the time of the exchange of stocks, the lines of the Erie were many miles distant from any territory in the coal regions served by the Susquehanna (though it is admitted that, since the purchase,
799 by traffic arrangements with the Erie and Wyoming Valley Railroad Company, the Erie has reached some mines in the territory previously reached by the lines of the Susquehanna) and avers, further, that the two companies have continued to connect with and carry coal from different mines, except that the Susquehanna had received traffic previously carried over the lines of the Erie because of the greater convenience in delivering to purchasers.

In 1872 or 1873 the New Jersey Midland Railroad had been built from Jersey City, New Jersey, to Middletown, New York, a distance of eighty-eight miles, and previous to 1883 it had passed under the management of the Susquehanna. The Erie was also then operating a road between the same points, both roads passing through Paterson and Passaic, in the state of New Jersey. Sometime previous to 1883 the Susquehanna had extended its road to Gravel Place, three miles northwest of Stroudsburg, Pennsylvania. It then began to transport coal delivered to it at Gravel Place by the Delaware, Lackawanna & Western Railroad Company to West End, near New York harbor, whence, in the absence at that time of a terminal of its own, it sent such coal over the lines of the Delaware, Lackawanna & Western to the latter's terminal at Hoboken, New Jersey. After the Susquehanna had acquired a terminal of its own at Edgewater, on New York harbor, and extended its line through its ownership of the capital stock of a subsidiary company to Wilkesbarre, Pa., both of which it did in 1893, its coal carrying business rapidly increased. The subsequent extension of its lines to Minooka in 1897, and its connection with the Delaware & Hudson Railroad, the Lehigh Valley Railroad and the Central Railroad of New Jersey, in the Wyoming coal region, enabled it to declare in its annual report of
800 June 30, 1897, that the completion of the road to Minooka placed the Susquehanna "in an independent position in respect to the transportation of coal." It was then in a position to transport to its terminal at Edgewater coal from the mines tributary to the Delaware & Hudson Railroad in the valley between Wilkesbarre and Carbondale, from the mines tributary to the Lehigh Valley Railroad in the same valley, and from the mines tributary to the New Jersey Central Railroad, as well as from the mines tributary to its own line. Though the Erie and the Susquehanna were free to extend their lines and thereby increase their business as common carriers of anthracite coal, it is clear that the more the business was thus increased the greater were the opportunities for competition between them. Each of them did, in fact, transport to New York harbor coal from the collieries of the Pennsylvania Coal Company and the Hillside Coal and Iron Company. After the Susquehanna had put itself "in an independent position with respect to the trans-

portation of coal," it and the Erie controlled lines which, without doubt, enabled them to compete in the procurement and the transportation of coal.

With such conditions existing prior to and at the time of the acquisition of the Susquehanna by the Erie it is contended on behalf of the United States that the principles applied in Northern Securities Company v. United States, 193 U. S., 197, are applicable. There it was held (p. 326) that the principal, if not the sole, object of the combination was to carry out the purpose of destroying competition between the constituent companies and thereby to put a restraint upon interstate commerce. Here, however, it is argued, on behalf of the defendants, that the proofs fail to show any purpose of destroying competition or of promoting a monopoly
801 in interstate commerce. The principal object of the combination, the defendants say, was to promote public convenience and interests, and that, conceding that the combination does eliminate the competition that previously existed between the two railroads, it is but an incidental restraint of interstate commerce.

The tabulated statements in evidence do not show the gross earnings of the Erie and the Susquehanna systems for 1897 or 1898. They do show, however, that the gross earnings of the Erie for the fiscal year ending June 30, 1900, were something over $38,000,000, and that the gross earnings of the Susquehanna for the fiscal year ending June 30, 1897, were but a little over $2,000,000. In 1898 the two roads reached Paterson, New Jersey, and Middletown, New York, but the competition between them at those places was certainly very inconsiderable. More than one-half of the gross earnings of the Susquehanna was from freight on coal alone, the remaining part being from freight on merchandise, and from passengers, mail, express and miscellaneous sources. Whatever of competition between the two roads there was, it was almost exclusively in the coal carrying business from the Wyoming region. The Susquehanna has no through freight business except as a coal carrier. It appears, too, that in 1898 the Susquehanna had larger terminal facilities at Edgewater, New Jersey, than it required at that point, that the terminal at Weehawken, about five miles south of Edgewater, was not an adequate one at that point for Erie's great and growing business, that the terminal facilities of the Susquehanna's freight business, exclusive of coal, in Jersey City and New York were restricted to small quarters in the terminals of the Pennsylvania Railroad Company, that the acquisition of the Susquehanna by the Erie enabled the Susquehanna to take its general freight
802 business from the Pennsylvania's terminals to those of the Erie in New York, and that by the acquisition the convenience of both the Erie and the Susquehanna was promoted and the interests of the public subserved. The total amount of anthracite coal transported to New York Harbor over the Erie in 1907 was 1,346,414 tons. Since the Erie acquired the stock of the Susquehanna the latter road has lost much of its tonnage of anthracite coal, not to the Erie, but to the Delaware & Hudson Railroad, and Mr. Johns, the superintendent of the Susquehanna, says that the Sus-

quehanna cannot now stand alone for the reason that, if its relations with the Erie were now severed, it would have no coal business left to it except that of a few mines which for ten months in 1908 produced only 216,310 tons.

The argument that the primary object or effect of the acquisition of the stock of the Susquehanna by the Erie was to suppress competition in interstate commerce between those two roads is not convincing. So many other roads reached into the anthracite fields of Pennsylvania and transported coal to New York harbor that the elimination of competition between the Erie and the Susquehanna in the anthracite coal business could have had no substantial effect upon the business, or upon the price of coal at New York harbor. That suppression of competition was not the principal purpose of the combination seems to be shown by the lease of the Susquehanna to the Erie of February 24, 1898, which declared that the closer connection between the two roads thereby proposed would be for the public benefit, as well as for their mutual advantage, and by the act of the legislature of New Jersey of April 2, 1898, by which consent to the proposed combination was given on condition that
803 "neither of the said railroad companies shall increase the present rate or rates of the freight or passenger traffic of the said companies in this state". I think the proofs show that whatever competition between them was eliminated by the combination, such elimination was so inconsiderable a thing that it did not enter into the objects which induced the Erie Railroad Company to increase its capital stock by $26,000,000, and that it was but an incidental, and not the designed or principal, result of the combination. I conclude, therefore, that this combination is not violative of the anti-trust act.

2. The second question is, Was the scheme by which the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, acquired the capital stock of the Temple Iron Company, and by which the Temple Iron Company acquired the capital stocks, assets and properties of the Simpson & Watkins companies, a combination or conspiracy violative of the anti-trust act?

Previous to 1899 the Temple Iron Company had been engaged in the manufacture of iron at Temple, near Reading, Pennsylvania. It had, however, a liberal charter which enabled it to own and operate mines. Having authorized its capital stock to be increased from $240,000 to $2,500,000, and its bonds to be issued to the amount of $3,500,000, or, perhaps, in anticipation of such authorization, it, on February 27, 1899, entered into a contract with Simpson & Watkins by which that firm agreed to sell all of the capital stocks, assets and properties of the Forty Fort Coal Company, the
804 Mount Lookout Coal Company, the Wyoming Land Company, the Wyoming Electric Light Company, the Babylon Coal Company, the Sterrick Creek Coal Company, the Edgerton Coal Company, the Hendrick Land Company, the Northwest Coal Com-

pany, and the Lackawanna Coal Company (the last a limited co-partnership), to the Temple Iron Company, for $2,260,000 of the capital stock of the Temple Iron Company and the $3,500,000 of its bonds, the bonds to be secured by a mortgage or collateral trust deed. On the same day Simpson & Watkins agreed that simultaneously with their receipt from the Temple Iron Company of its stock and bonds above mentioned they would transfer and deliver to the Guaranty Trust Company of New York, as trustees, the whole of their stock of the Temple Iron Company ($2,260,000) and $2,100,000 of the $3,500,000 of its bonds, and the trustee agreed to pay to Simpson & Watkins $3,238,396.66 in cash and to issue to them certificates of beneficial interest in $1,000,000 of the stock. The trustee further agreed to purchase from Mr. Baer the remaining outstanding stock of the Temple Iron Company ($240,000) at 60 per cent of its par value. It was also agreed that the trustee should have the power to sell beneficial interests in the stock, such interests to be expressed in certificates issued by the trustee to the purchasers. On the same day the Guaranty Trust Company, of the first part, and J. P. Morgan, and others, composing the underwriting syndicate, of the second part, entered into an agreement by which the parties of the second part agreed to purchase, on demand of the trustee, the $2,100,000 of bonds at the rate of 90 per cent of their par value, and $1,500,000 of the certificates of beneficial interest in the stock (being the residue of such certificates after the delivery of
805 $1,000,000 of them to Simpson & Watkins) at par. Also, on the same day, the Reading Company (holding all of the capital stock of the Philadelphia & Reading Railway Company), the Lehigh Valley Railroad Company, the Delaware, Lackawanna & Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company each entered into a tripartite agreement with the Temple Iron Company and the Guaranty Trust Company of New York, by which the Reading Company and the five railroad companies agreed to purchase from the Trust Company, not later than December 31, 1906, at par value, with interest at six per centum per annum from the date of the last dividend thereon, all of the Trust Company's shares of the stock of the Temple Iron Company, in the following proportions, to wit (the proportions being the same as the total tonnages of coal carried by them from all sources in the year 1898): the Reading, 29.96 per cent; the Lehigh Valley, 22.88 per cent; the Delaware, Lackawanna & Western, 19.52 per cent; the Central, 17.12 per cent; the Erie, 5.84 per cent; and the New York, Susquehanna & Western, 4.68 per cent. In these tripartite agreements the Reading Company and the five railroad companies also severally agreed that, if the earnings of the Temple Iron Company for any period of six months ending June 30 or December 31 should not be sufficient for the sinking fund and interest payments in the agreements provided for, and three per cent on the par value of the stock of the Temple Iron Company, then each of the six companies would pay to the Trust Company, for the purpose of making up such deficiency, 12½ cents per ton for all

coal carried by it from the Simpson & Watkins collieries for such period of six months, or so much of said sum as should be
806 necessary to make up the deficiency, and, if there should still be a deficiency, then that each of the six companies would pay to the Trust Company such proportion of the remaining deficiency as should equal the proportion of stock agreed to be purchased by it. They also severally guaranteed, in the same proportions, the payment of the principal of the bonds at maturity, on January 1, 1925.

Thus was this combination effected. It went into operation and, although the guarantor companies were compelled to pay to the Trust Company deficiencies in the earnings of the Temple Iron Company to the amount of $483,000 for the year 1899 and the strike years of 1900 and 1902, the business of the Temple Iron Company has been highly successful. On December 4, 1908, when Mr. Law testified for the Government, the Temple Iron Company had purchased out of its net earnings for its sinking fund $1,900,000 of the bonds, the total issue of which was $3,500,000, and had a surplus of a million dollars in its treasury; and on June 30, 1909, when Mr. Thomas testified for the defendants, all of the bonds except $800,000 had been purchased by the Temple Iron Company and the $483,000 paid by the guarantor companies to the Trust Company had been refunded. In December, 1906, the certificates of the beneficial interest in the stock of the Temple Iron Company, which the Trust Company had issued for the whole of the 25,000 shares, and which were widely scattered amongst about 200 holders in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania, were called in by the Trust Company and, pursuant to the provisions of the tripartite agreements, the whole of the capital stock of the Temple Iron Company, excepting 50 shares held by the directors,
807 was acquired by the Reading Company and the five railroad companies who agreed to purchase it, except that the Reading Company's proportion was divided between it and some of its subsidiary corporations.

It appears, then, that the Guaranty Trust Company no longer holds any of the capital stock of the Temple Iron Company. It does hold, however, the trust mortgage by which the bonds of the Temple Iron Company are secured. What the terms of that mortgage are does not appear, nor is the Trust Company a party to this suit. The Erie Railroad Company, in its answer, avers that "the Guaranty Trust Company is still the trustee of the mortgage which secures the payment of the bonds which have been purchased by numerous bondholders, whose rights should not be impaired herein without bringing them, or their trustee, into this court as a party defendant." A similar averment is contained in the answer of the New York, Susquehanna & Western Railroad Company. The issue of the $3,500,000 of bonds is one of the acts by which the Temple Iron combination was made possible. The destruction of the combination may impair the value of the bonds. The trustee of the bondholders would therefore seem to be a proper, if not an indis-

pensable, party. Nevertheless, this point is not urged in the briefs, and I shall rest my decision on other features of this branch of the case.

A general act of the state of Pennsylvania, passed April 15, 1869 (P. L. 1869, p. 31), provides: "That it shall and may be lawful for railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber and other material interests of this Commonwealth, by the purchase of their capital stock and bonds, or either of them, or by the guarantee of or agree-
808 ment to purchase the principal and interest, or either, of such bonds, provided that this act shall not apply to the stock and bonds of any corporation possessing mining or manufacturing privileges in the county of Schuylkill." There is no allegation in the petition raising the question whether a common carrier engaged in interstate commerce, by the mere act of purchasing, for the purpose of securing its transportation business, the capital stock of a coal mining corporation also engaged in interstate commerce, monopolizes a part of that commerce, or restrains it, contrary to the provisions of the anti-trust act. If there were, then, since the contention of the Government is that the defendant carriers by their purchase of the capital stock of the Temple Iron Company became the virtual owners of the mines whose capital stocks were owned by the Temple Iron Company, this court would, if it adopted that view, be required to consider one of the grave constitutional questions which the Supreme Court mentioned, but found it unnecessary to decide, in United States v. Delaware & Hudson Co., 213 U. S., 366, namely: "Did the adoption of the constitution and the grant of power to Congress to regulate commerce have the effect of depriving the States of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities, a power which the States from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several States have been developed, their enterprises fostered, and vast investments of capital have been made possible"? Nor does the petition contain any allegation to the effect that the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna &
809 Western Railroad Company, the Erie Railroad Company and the New York, Susquehanna & Western Railroad Company, by purchasing the capital stock of the Temple Iron Company, which had simultaneously purchased the capital stocks of the Simpson & Watkins companies, and by guaranteeing the payment of the obligations of the Temple Iron Company, created a combination in the nature of a copartnership for sharing the profits and losses of the Temple Iron Company, and that they thereby, in violation of the anti-trust act, monopolized a part of the interstate commerce in anthracite coal. Such a copartnership is suggested, it is true, in the brief of the Government, but no issue of that kind is presented by the pleadings. As neither of these two important questions is in issue, they cannot properly be decided in this case.

The only complaint in the petition concerning the Temple Iron

transactions is that after Simpson & Watkins and certain other independent operators in the Wyoming and Lehigh coal regions had "determined and agreed to promote the construction of a new line of railroad from the regions where their mines were located to tide-water," and after, for that purpose, they had "caused the New York, Wyoming & Western Railroad Company to be organized under the laws of the State of Pennsylvania," had secured "large subscriptions" to the capital stock of the company, had made surveys of its line, had purchased 7,000 tons of steel rails, and had secured pledges to it of "the tonnages of the aforesaid independent operators not already pledged by contract," the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company and the New York, Susquehanna & Western Railroad Company, entered into the series of
810 contracts of February 27, 1899, hereinabove mentioned, and thereby, through their concerted action, (1) caused the construction of the projected New York, Wyoming & Western Railroad to be abandoned, and (2) pooled and divided amongst themselves (excepting the Reading Company) the tonnages of the eight Simpson & Watkins collieries. And the only prayer of the petition which specifically relates to the Temple Iron transactions, besides a prayer for injunction, is that we shall adjudge them illegal because thereby (1) the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, through the instrumentality of the Temple Iron Company, acquired the Simpson & Watkins collieries "in pursuance of a combination or conspiracy between the defendants last named to defeat the construction of a competing railroad from the anthracite fields to tide-water," and because (2) "in so acquiring, through the purchase of agreed percentages of the capital stock of the Temple Iron Company, ownership in common of the aforesaid collieries formerly owned by Simpson & Watkins, the said Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company and New York, Susquehanna & Western Railroad Company pooled and divided among themselves the tonnages from those collieries, thereby shutting out competition in its transportation." These two questions—one concerning the alleged defeat and abandonment of the proposed new railroad, and the other concerning the alleged pooling and division of ton-
811 nages are the only questions on this branch of the case presented by the pleadings, and the only ones this court is now at liberty to consider.

It appears that Simpson & Watkins and other independent operators of anthracite coal mines were promoting the new railroad with the declared intention of securing access to tide-water at New York free from the domination of existing carriers whose transportation charges were complained of. But the charter of the new

railroad authorized its construction "from a point in the Delaware River in Northampton County, Pennsylvania (being also the boundary line between the States of New Jersey and Pennsylvania), opposite to or near Belvidere, New Jersey, and thence to a point on the Susquehanna River, within or near Pittston, Luzerne County, Pennsylvania, with the necessary branches or laterals." It is not pretended that the new road was to extend to tide-water or even across the Delaware River into New Jersey. It is said in the Government's brief that at the point opposite to Belvidere, that is, at the eastern terminus of the proposed new road in Pennsylvania, connection could have been made with the Delaware, Lackawanna & Western Railroad, the Central Railroad of New Jersey, the Lehigh Valley Railroad, and the Pennsylvania Railroad, all of which do reach tide-water. It appears, however, that no arrangements of any kind had been made for any such connection. Mr. Edward B. Sturges, who was interested in the proposed road and subscribed for five hundred shares of its stock, testified as follows:

"Q. The charter, or the articles of incorporation, only authorized this road to build a line as far as a point opposite Belvidere, N. J., did they not?

A. That is all.

Q. How was it contemplated to get from there to tide-water?

812 A. We had not actually entered upon the construction of any road from there on. We thought we could get the transportation over some road. We knew that getting across New Jersey might be beyond our power.

Q. What roads would you have connected with?

A. We could not tell. We never had made any arrangements at that time.

Q. I do not mean that roads you could have actually entered into contracts with, but which you would have physically connected with?

A. The Delaware, Lackawanna & Western Railroad across the River, the New Jersey Central and the Lehigh Valley and the Pennsylvania below the Belvidere division. We never got that far because we felt that if we could get over to the New Jersey line we could get to New York or to tide-water later. Later there was another arrangement made."

This admission by Mr. Sturges, who was a witness called for the Government, taken with the fact that it does not appear that there was any railroad whatever on the Pennsylvania side of the Delaware River at or near the point opposite to Belvidere with which any connection could have been made, shows that the allegation of the petition that the purpose was to construct a new road from the coal regions to tide-water is not supported by the evidence. It is certain that the new road could not, under its charter, have reached tide-water or extended beyond the confines of the State of Pennsylvania. It matters not that the independent coal operators had been threatening to build a new road from the coal regions to tide-water, or what influence that threat had, if any, upon the

formation of the combination which absorbed the collieries of Simpson & Watkins. The allegation is that the combination
813 defeated the construction of a new railroad from the coal regions to tide-water; the fact is that the construction of such a road was never authorized by law, or even contemplated, and, consequently, that it was not defeated. Furthermore, there is no proof in the case that the Temple Iron combination directly defeated the construction of any railroad whatever, either from the coal regions to tide-water or from the coal regions to the Delaware River. It did not acquire the capital stock of the new railroad company and does not in any manner control its charter.

It may be observed, further, that the allegation of the petition is that the construction of the proposed new railroad has already been defeated and abandoned. The fourth section of the anti-trust act confers on circuit courts "jurisdiction to prevent and restrain" violations of the act. But this court cannot prevent or restrain a past violation of the act. There is no suggestion in the petition that the Temple Iron combination is still preventing the construction of the projected railroad. Nor does it appear that if the prayer for injunction should be granted the new railroad would be built. That prayer, in substance, is that the Railroad Companies shall be enjoined from voting on the stock of the Temple Iron Company which they own, and that the Temple Iron Company shall be enjoined from paying dividends to the Railroad Companies. It is not proposed to enjoin the Temple Iron Company from voting on the stocks of the Simpson & Watkins Companies, or to enjoin the Simpson & Watkins Companies from paying dividends to the Temple Iron Company. How would the present situation, in respect of the alleged defeat of the construction of the proposed new railroad, be changed by enjoining the Railroad Companies from voting
814 on the stock of the Temple Iron Company and enjoining the Temple Iron Company from paying dividends to the Railroad Companies? The gravamen of the complaint is that the construction of the proposed new railroad has been defeated, and that thereby interstate commerce has been restrained. The injunction we are asked to issue cannot restore a condition under which the probability of a resumption of the efforts to build the new railroad will be in anywise increased. Neither can we frame an injunction that will restore such a condition under the general prayer for relief. The petition makes no case on which a more sweeping injunction than the one specifically prayed for can be allowed, for none of the seven Simpson & Watkins Companies is a party defendant, except the Mount Lookout Coal Company and the Lackawanna Coal Company, and each of those two companies is a party defendant only in respect of the 65 per cent contracts hereinafter considered.

If, then, any relief can be granted, under the allegations of the petition, against the Temple Iron combination, it must be because there was a pooling and division of the transportation business of the Simpson & Watkins collieries amongst the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the

Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company. It is not charged that the Philadelphia & Reading Railway Company (whose capital stock is held by the Reading Company) obtained any part of the tonnage of those collieries. The fact is that none of the eight Simpson & Watkins collieries is tributary to the Philadelphia & Reading Railway Company. I understand, too, that none of them is tributary to the Central Railroad Company of New Jersey. They are located at
815 widely separated points in the Wyoming region. With one or two exceptions, each of them is tributary to a single railroad. The productions of the Northwest, Edgerton and Sterrick Creek collieries are carried by the Erie, of the Lackawanna colliery by the Erie, the Delaware, Lackawanna & Western, and the New York, Susquehanna & Western, of the Babylen and Mount Lookout collieries by the Lehigh Valley, of the Forty Fort and Harry E. collieries (both owned by the Forty Fort Coal Company) by the Lehigh Valley and the Delaware, Lackawanna & Western. The proportions in which the six carriers (considering the Reading Company, the holder of the capital stock of the Philadelphia & Reading Railway Company, as a carrier) agreed in the tripartite contracts to purchase the stock of the Temple Iron Company were not fixed by the tonnages of the eight collieries alone. Had they been, the Reading Company and the Central Railroad Company of New Jersey would have acquired none of the Temple Iron stock. Those proportions were based on the total shipments of anthracite coal carried by the six carriers from all sources for the year 1898 (according to Mr. Baer) or for the five years from 1894 to 1898 (according to the contention of the counsel for the Government). Neither in the tripartite agreement, nor elsewhere, does it appear that the productions of the eight collieries were thereafter to be carried by the six carriers in the proportions in which they agreed to purchase the Temple Iron stock. The conditions were such as to forbid the making of such a contract. And the tripartite agreements themselves show that no attempt to make any such contract was in the minds of the parties, for they assumed that the tonnages from the eight collieries over the several roads would vary from
816 time to time, and therefore provided that if the earnings of the Temple Iron Company should be insufficient to meet its sinking fund, interest and other charges, the carriers should make up the deficiency, not primarily in the proportions of stock agreed to be purchased by them, but by the payment by each carrier of a sum not exceeding 12½ cents per ton on such amount of coal as it should actually carry from the eight collieries. By this arrangement the Reading Company and the Central Railroad Company of New Jersey were exempt from such payments. Nor is there anything in the tripartite agreements, or in any other proven agreements, that shows that these six carriers have entered into an agreement not to compete with one another in the coal transportation business, or that forbids any of the carriers from extending its line to any or all of the eight collieries and transporting as much of

the coal produced by them as it can get. Not only is any suppression of competition denied in the answers and by the defendants' witnesses, but they deny any purpose of bringing about such a result. The burden is on the Government, therefore, to show that, under the combination, there was in fact a pooling and division amongst the carriers of the tonnages of the eight collieries. This it has failed to show.

3. The third question is, was the acquisition, in 1901, of the capital stock of the Central Railroad Company of New Jersey by the Reading Company effected by a combination or conspiracy in restraint of trade or commerce among the several states?

The petition alleges that about January, 1901, the Reading Company, which then held and still holds all of the capital stock of the Philadelphia & Reading Railway Company, issued additional shares of its capital stock to the amount of $3,017,650 of first pre-
817 ferred and $1,713,750 of second preferred, par value, and created an additional bonded indebtedness of $23,000,000, due in 1951, which it gave to the holders of the capital stock of the Central Railroad of New Jersey for 145,000, being a majority, of the shares of that stock, and thereby brought under one controlling power those two carrier companies, which, it is alleged, operated parallel and competitive lines. This, it is said, destroyed competition between them and their subsidiary coal companies and promoted monopoly. The answer of the Reading Company denies that the Philadelphia & Reading Railway and the Central are parallel or competitive lines, declares that they are connecting lines, admits that on or about January 7, 1901, it agreed to purchase 145,000 shares of the capital stock of the Central, and avers that, to secure the payment of the $23,000,000 of bonds which it issued to aid in financing the enterprise, it pledged the stock purchased from the Central, with other stock, as collateral, under an agreement dated April 1, 1901, which it executed and delivered, with the Certificates for the stock, to the Pennsylvania Company for Insurances on Lives and Granting Annuities. The answer of the Central also denies that the two carriers operate parallel or competing roads, or that the scheme throttles competition or promotes monopoly.

In 1890 the Philadelphia & Reading Railroad Company, the predecessor of the defendant Philadelphia & Reading Railway Company, the most easterly point of whose line was at Bound Brook, New Jersey, 20 miles west of New York harbor, determined to promote the construction of the Port Reading road from Bound Brook to Arthur Kill, on the tide-waters of the New York harbor, in order to secure on that harbor coal terminal facilities of
818 its own. The road was completed in 1892. Substantially all of the capital stock of the Port Reading road was owned by the Philadelphia & Reading Railroad Company and passed, upon the sale of the latter's assets, under the receiver's proceedings in 1896, to the defendant, the Reading Company. The Reading Company, from 1896 to the present time, has held, as owner, substantially all of the capital stocks of the Philadelphia & Reading Railway

Company and the Port Reading Railroad Company. By this extension the Philadelphia & Reading Railroad Company secured an outlet to New York harbor for its coal. The terminal on Arthur Kill was not a convenient one for passenger or general freight traffic, and up to 1901, when a majority of the stock of the New Jersey Central was purchased by the Reading Company, nearly all of the traffic of the Philadelphia & Reading Railway Company going to and from New York, except its coal traffic, passed over the New Jersey Central between Bound Brook and New York. Prior to 1901 contracts between the Philadelphia & Reading Railway Company, the Central, and other roads, had been entered into for the establishment of joint through routes over their lines. These contracts largely benefited the Philadelphia & Reading Railway Company. In December, 1900, Mr. Baer, president of the Philadelphia & Reading Railway Company, was informed that a majority of the capital stock of the Central Railroad Company of New Jersey was on the market for sale and that the Baltimore & Ohio Railroad Company was a prospective purchaser of it. Fearing that if the control of the Central should pass into the hands of the Baltimore & Ohio, the Philadelphia & Reading would lose the benefit of its contracts for joint through routes and be disastrously hampered in, if not excluded from, the use of the Central's New York
819 terminals, he quietly bought the stock for the Reading Company. Evidently, the predominating motive in the purchase was to preserve to the Philadelphia & Reading its traffic arrangements with the Central. The direct effect of the purchase was to preserve them. The necessary effect of the combination was also to eliminate all possible competition between the Philadelphia & Reading and the Central in the anthracite coal carrying business. In the circumstances, however, such elimination, though a necessary result of the combination, was incidental to its main purpose and not in contravention of the anti-trust act as it has heretofore been construed. The argument that the Philadelphia & Reading and the Central were not competing but were connecting roads is not sound. To a certain extent they did supplement each other, but as the Port Reading road gave to the Philadelphia & Reading an outlet to New York harbor for its coal carrying business, without the use of the Central's road, the Philadelphia & Reading and the Central were, previous to the combination, in the position of competitive carriers of coal even though they did not reach the same mines or the same parts of the Wyoming region. Mr. Baer himself said:

"Q. What do you regard as competitors of the Philadelphia & Reading now in New York harbor, as to anthracite coal?

A. All of the companies.

Q. Won't you be good enough to name them for us?

A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware & Hudson, the Erie, Ontario & Western. I guess they are all the roads leading to New York directly or indirectly.

Q. Those roads are all carrying anthracite coal to the New York harbor?

820 A. Yes, sir.

Q. And you regard them as competitors who must be considered in fixing rates?

A. Yes, sir, unquestionably."

I prefer to base our opinion not on the ground that the two roads were not competitors in the anthracite coal carrying business, but on the other, even though it be the narrower, ground that whatever suppression of competition resulted from the combination it was but an incidental effect of a scheme to save the business of the Philadelphia & Reading. Indeed, the elimination of competition between the Philadelphia & Reading and the Central, in the anthracite coal carrying business, was too small a thing to have been an important element in the object of the combination. The proximity of the lines of the Delaware, Lackawanna & Western, the New York, Susquehanna & Western, the New York, Ontario & Western, the Erie, and the Delaware & Hudson, to the line of the Central, and of the Pennsylvania's line to the line of the Philadelphia & Reading, left the competitive conditions in the coal carrying business very slightly affected by the elimination of competition between the Central and the Philadelphia & Reading.

I conclude that this combination was not violative of the anti-trust act.

4. The fourth question is, Are the contracts referred to in the record as the 65 per cent. contracts, contracts in restraint of interstate commerce?

The charge is that they are, and the prayer is that they be delivered up to be cancelled, and that further operations thereunder be enjoined.

Long prior to 1869 the Delaware, Lackawanna & Western Railroad Company had been specially authorized by the legislature of Pennsylvania to acquire and hold coal lands, and to mine,

821 purchase and vend coal. By a general act of that state, approved April 15, 1869, railroad and canal companies, as already stated, were authorized to aid corporations engaged in developing coal mines by the purchase of their capital stocks and bonds, or either of them. Pursuant to the policy of the state of Pennsylvania thus established, it appears that, before 1900, the Delaware, Lackawanna & Western Railroad Company had acquired coal lands, and that the Reading Company had acquired the capital stock of the Philadelphia & Reading Coal & Iron Company, the Lehigh Valley Railroad Company the capital stock of the Lehigh Valley Coal Company, the Central Railroad Company of New Jersey a majority of the capital stock of the Lehigh & Wilkesbarre Coal Company, the Erie Railroad Company a majority of the capital stock of the Hillside Coal & Iron Company, and the New York, Susquehanna & Western Railroad Company a majority of the capital stock of the New York, Susquehanna & Western Coal Company. The Delaware, Lackawanna & Western Railroad Company and the above mentioned

subsidiary coal companies have each entered into one or more of the 65 per cent. contracts.

For many years previous to 1900, when the first of these contracts was entered into, many of the smaller coal producing companies sold the products of their mines to the larger coal companies, producing and shipping coal in their respective neighborhoods, for certain percentages of tide-water prices. These percentages were increased from time to time until they reached 60 per cent. In the early fall of 1900 a general strike of the coal miners and laborers of the whole anthracite region took place, resulting in an entire cessation of the production of anthracite coal. Conferences were had and a ten per cent. increase in wages was finally granted
822 by the defendant carriers' subsidiary coal companies to their employees. This increase, of course, affected the independent coal companies. On October 1, 1900, at a meeting of "individual operators", in Wilkesbarre, Pa., a committee was appointed "to confer with the presidents of the transportation companies and endeavor to learn if there is to be a reduction in the rates of freight to cover the advance in wages that they have offered to their employees". On October 5, 1900, at another meeting, in Scranton, Pa., the committee reported a recommendation that the "individual operators" post the "notice of advance of wages already made by the companies". The minutes of this meeting then proceed as follows: "After the reading of this report, Mr. Kemmerer [one of the members of the committee], in answer to the question as to what the presidents of the transportation companies had said regarding a reduction in the rates of freight to cover the proposed advance of ten per cent. in wages, said that the committee could not report a definite promise from them that there would be a reduction in the freight rates, but that they expressed their sympathy with the individual operators, and he intimated that they had said something would be done for the individual operators to improve the present conditions of the coal business". The meeting resolved to post the notices, and then appointed a new committee of three persons "to confer with the various carrying companies relative to a new contract". This committee had a number of meetings with other gentlemen, who were officers of the defendant carriers and also of their subsidiary coal companies, in which there were negotiations concerning the terms of the proposed new contracts. The independent operators were demanding 65 per cent. The demand upon
823 them was that, instead of having the contracts extend for a period of years, as the previous percentage contracts had done, they should continue for the life of their collieries. Mr. Cumming, vice-president of the Erie Railroad Company and an officer of its subsidiary, the Hillside Coal & Iron Company, says that his reason for desiring the new contracts to cover the entire life of the collieries was "to have the question settled once for all". Other concessions were demanded of the operators. Finally, the form of contract now under examination was agreed on. It provides, amongst other things, that "the seller hereby sells and agrees to deliver on cars at the breaker to the buyer all the anthracite coal

hereafter mined from any of its mines now opened and operated, or which may hereafter open and operate on the premises intended to be covered by this contract", that "shipments shall be made from time to time as called for by the buyer", that the buyer will "arrange to take the coal in as nearly equal daily or weekly quantities as in its judgment the requirements of the market will permit", that the buyer will "use its best efforts to find a market for the seller's coal so as to enable the seller's collieries to be worked as many days as practicable with due regard to the general market conditions", and that the buyer "will not discriminate in favor of its own mines, or any persons, firms or companies with which it has contracts to buy coal, but that the quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers, it being understood that so far as practicable the quantity ordered shall not be less than a just proportion of all the anthracite
824 coal which the requirements of the market may from time to time demand".

This proves conclusively that the representatives of the subsidiary coal companies did agree upon the form of the contracts before any of them were actually signed. They deny that in their negotiations with the committee of the "individual operators" they represented the defendant carriers. They say they represented only the subsidiary coal companies. Unquestionably, however, the carriers had an interest in the negotiations, and, as they were officers of both the carriers and their subsidiary coal companies, they must be considered as having represented both. The form having been agreed on, the following contracts were entered into:

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Name of seller.	Name of buyer.	Date of contract.
Green Ridge Coal Co.	Hillside Coal & Iron Co.	Nov. 1, 1900
(1) Robertson & Law	" " "	" "
Jermyn, et al.	N. Y. Sus. & West. Coal Co.	" "
Nay Aug Coal Co.	Hillside Coal & Iron Co.	Feb. 1, 1901.
Austin Coal Co.	L. V. Coal Co.	Mar. 26, "
Parrish Coal Co.	L. & W. Coal Co.	May 1, "
Red Ash Coal Co.	" " "	" "
Melville Coal Co.	" " "	June 1, "
Midvalley Coal Co.	L. V. Coal Co.	" 24, "
Lentz & Co.	" " "	" "
Temple Iron Co.	Hillside Coal & Iron Co.	July 1, "
Howe, et al., Executors.	L. V. Coal Co.	" 9, "
St. Clair Coal Co.	P. & R. Coal & Iron Co.	" 12, "
Enterprise Coal Co.	" " "	" 17, "
Pine Hill Coal Co.	" " "	Aug. 17, "
Lackawanna Coal Co.	D. L. & W. R. R. Co.	" 27, "
Temple Iron Co.	L. V. Coal Co.	Sept. 20, "
Clear Spring Coal Co.	D. L. & W. R. R. Co.	" 21, "
Richard White, et al.	P. & R. Coal & Iron Co.	Oct. 15, "
Buck Run Coal Co.	" " "	Mar. 12, 1902.

Raub Coal Co.	L. V. Coal Co.	May 1,	"
(2) Delaware & Hudson Co.	Hillside Coal & Iron Co.	June 30,	"
Geo. F. Lee Coal Co.	D. L. & W. R. R. Co.	Mar. 11,	1903.
Clarence Coal Co.	Hillside Coal & Iron Co.	" 23,	"
Lackawanna Coal Co.	" " "	Oct. 21,	"
Dolph Coal Co.	" " "	Apr. 14,	1904.
Coxe Bros. & Co.	L. V. Coal Co.	Mar. 29,	1906.
North End Coal Co.	D. L. & W. R. R. Co.	May 26,	"

(1) Cancelled by mutual consent of parties on May 17, 1909.
(2) Expired April 1, 1908.

826 These facts seem to show that the custom of buying and selling coal on percentage contracts did not have its origin in any general agreement or concerted action on the part of the defendants. Rather does it seem that the contracts were the natural outgrowth of conditions attending the mining of coal. But the petition charges that there are special features in the 65 per cent. contracts, and such action concerning their adoption, that, as to them at least, there was and is an unlawful combination or conspiracy. The substantial part of the charge is in the following language:

"Upon the termination of these contracts [the contracts which it is alleged were for terms expiring in 1900] the said defendant carriers, either directly or through the instrumentality of their said subsidiary companies and agents, the defendant coal companies, in pursuance of a previous agreement between themselves, severally offered to make and did make and conclude with nearly all the independent operators along their lines new contracts containing substantially uniform provisions agreed upon beforehand by the defendant carriers in concert, some of the operators contracting with one of the defendants and some with another, in which contracts the independent operators severally agreed to deliver, on cars at the breakers, to one or the other of the defendant carriers or its subsidiary coal company, as the case might be, all the anthracite coal thereafter mined from any of their mines now opened and operated or which they might thereafter open and operate, deliveries or shipments to be made from time to time as called for by the said carriers or their subsidiary coal companies; in consideration whereof the said carriers or their subsidiary coal companies severally agreed to pay the independent operators for pre-
827 pared sizes of anthracite 65 per cent. of the general average free-on-board prices of like sizes prevailing at tide-water points at or near New York, as computed from month to month, and for pea coal and sizes below that proportionately smaller percentages, declining as the sizes decline; and the defendant carriers controlling, as aforesaid, all the lines of transportation between the anthracite regions and tide-water, save those of the Pennsylvania Railroad Company and the New York, Ontario & Western Railroad Company, and therefore controlling the rates for the transportation of anthracite to tide-water except in respect to the output of the

limited number of collieries reached by the lines of the said Pennsylvania Railroad Company and the New York, Ontario & Western Railway Company, acting either directly or through the agency of their subsidiary coal companies, fixed the said percentages to be paid by them or their coal companies under said contract at a point that bore such a relation to the published rates of transportation, that, taking for a basis the average tide-water prices of anthracite when the contracts were made and during many years previous (barring strike periods), the independent operator who entered into one of these contracts realized upon his coal from 15 to 50 cents more a ton, approximately (depending upon the length of the haul and variations in the tide-water price), than was realized by the independent operator who shipped his coal to tidewater on his own account, paying the published rates of transportation himself, and sold it there in competition with the coal of the defendant carriers and their coal companies, which difference or advantage represents the amount per ton that the defendant carriers or their coal companies paid for the privilege of controlling the sale and disposition of the independent output so as to prevent it from
828 selling in competition with the output of their own mines, as aforesaid. The result of this arrangement, as was intended, was to draw, if not to force, the great majority of the independent operators into making the aforesaid contracts, thereby enabling the defendant carriers and their subsidiary companies, the defendant coal companies, to control absolutely and until the mines are exhausted the output of most of the independent anthracite mines, and to prevent it, as aforesaid, from being sold in competition with the output of their own mines in the markets of the several States, particularly in the great tide-water markets."

In the brief of the Government there are inserted tabulated statements intended to show that after deducting from the amounts received by the Lehigh Valley Coal Company for its coal shipped to New York harbor between November, 1900, and December 1, 1901, and between January and December, 1907, the 65 per cent paid to the selling companies, the expense of selling and the loss by wastage, the amounts remaining did not equal the published freight rates of the Lehigh Valley Railroad Company, the owner of its capital stock and over whose road the shipments were made. Other tabulated statements are intended to show the same condition as to coal purchased by the Philadelphia & Reading Coal & Iron Company and shipped over the Philadelphia & Reading Railway Company's line between November, 1900, and December, 1901. Assuming these tabulated statements, prepared under the direction of counsel and not verified by any witness, to be free from error, we fail to find any evidence of concerted action designed to bring about that result. We are dealing here with concerted action, with a contract, combination or conspiracy, and not with individual
829 unlawful transactions. If it is a fact that the Lehigh Valley Railroad Company is carrying coal for the Lehigh Valley Coal Company at less than its published rates, its conduct is violative of the act to regulate commerce of February 4, 1887, and its amend-

ments, and may be corrected by a proceeding instituted before the Interstate Commerce Commission or some court; but, to be violative of the anti-trust act, the discrimination in favor of the Lehigh Valley Coal Company and against other coal companies shipping over the Lehigh Valley road must be the result of a contract, combination or conspiracy in restraint of interstate commerce. It is not shown that the effect of these contracts was to require each of the defendant carriers to carry coal at less than its published rate. Nor are we satisfied that even in the case of the Lehigh Valley Railroad Company the tabulated statements in the Government's brief, above referred to, are free from error. They assume that all the coal shipped to New York harbor by the Lehigh Valley Coal Company in any particular month was sold during that month. Other possible errors in the statements are pointed out in the brief for the Lehigh Valley Railroad Company.

Nor does it appear that the conferees ever met after the form of the contracts was agreed on. The first three of the contracts, as we have seen, are dated November 1, 1900. No obligation was imposed upon any party to enter into one of them, but each independent operator was left free to do so or not as it might please. Consequently, it may be said, and in effect it is said, that there could have been no combination of carriers, or of their subsidiary coal companies, after November 1, 1900. But in 1907 the total production of anthracite coal in Pennsylvania was 76,836,082 tons.

Of this amount 41,963,055 tons were produced by the Delaware, Lackawanna & Western Railroad Company, and the coal companies subsidiary to the Reading Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, and about 6,000,000 tons were produced by the selling coal companies that had entered into the 65 per cent contracts. By these contracts the buyers (the subsidiary coal companies) were enabled, in 1907, to add to the coal produced by themselves that produced and sold under the contracts. Not only have the buyers the right, under these contracts, to all the coal that the sellers' collieries shall ever produce, but they alone are the judges of the requirements of the market, they alone determine when calls for deliveries by the sellers shall be made, and they alone determine what shall be the sellers' "just proportion of all the anthracite coal which the requirements of the market may from time to time demand." Here is something more than mere acquisition of property. It is a plan for future acquisition of property and future regulation of the supplies to be furnished by the subsidiary coal companies and the selling companies. It is accordingly contended that the contracts between one of the buyers and its sellers are so related to the contracts between each of the other buyers and its sellers that all the contracts must be considered together as one series of contracts which were entered into and are maintained by a combination of buyers and sellers who thereby restrain interstate commerce and monopolize a part of it. We have seen that the form of the contracts had its origin in a conference of

buyers and sellers in October, 1900. But all that the conference did was to agree upon the form, and when that agreement was reached its work was done. Nor is there any evidence showing that the contracts are maintained by any combination whatever. On their faces, they are contracts between individual buyers and individual sellers. They are not contracts between or with any combination of buyers or sellers. Each buyer has the power to regulate only the supply furnished by its particular sellers. There is no joint power to regulate the supplies furnished by all the sellers. To grant the injunction asked for, namely, "that the said contracts be delivered up to be canceled, and that the defendants, their agents and servants, and all persons acting or assuming to act under their authority, be forever enjoined from further executing or carrying into effect any of the provisions of the said contracts, and from making or entering into any contracts of like character or effect hereafter," means, not that we shall enjoin acts which shall prevent an existing combination from continuing to restrain interstate commerce or to monopolize a part of it, but that we shall severally enjoin the parties who have entered into the twenty-eight independent contracts hereinabove mentioned from operating thereunder. That would be to grant relief on a petition far more multifarious than any one has suggested the present petition to be. It presents no such multifariousness. Its purpose is to secure an injunction against these contracts on the ground that they were devised and are maintained by an unlawful combination. We do not find this ground of complaint supported by the evidence.

This conclusion renders it unnecessary to inquire whether the contracts, separately considered, are wholly intrastate contracts, as the defendants contend, or whether, separately considered, they are in restraint of interstate commerce, as the Government's counsel contend. In either case, no relief can be granted in this pro-
312 ceeding, for, while the anti-trust act condemns all contracts as well as all combinations in restraint of interstate commerce, we are not here asked to award a series of injunctions against defendants who have entered into and are maintaining a series of separate and independent contracts which are in restraint of interstate commerce, but to enjoin an alleged combination from further maintaining a series of alleged unlawful contracts. As no such combination exists, no relief, in respect of the 65 per cent. contracts, can be granted.

5. The fifth question is, Do the facts show a general combination or conspiracy in restraint of interstate commerce?

The charge is that, under the influence of competition, the average price of stove coal declined from $4.15 and $4.19 a ton in 1892 and 1893 to $3.60 a ton in 1894 and $3.12 a ton in 1895. "Whereupon," says the petition, that is, in 1895, "the defendant, the Reading Company, and the defendant carriers and the defendant coal companies, owning or controlling 90 per cent., more or less, of all the anthracite deposits, and producing 75 per cent., more or less, of the annual anthracite supply, and controlling all the means of transportation between the anthracite mines and tide-water, save

the railroads operated by the Pennsylvania Railroad Company and the New York, Ontario & Western Railway Company, which, as aforesaid, reach only a limited number of collieries, entered into an agreement, scheme, combination or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain and monopolize, and have controlled, regulated, restrained and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other states, with the result that competition in the transportation and sale of
833 anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced". It is further charged that "as steps in the development of this illegal combination, and in furtherance of its illegal purposes, the defendants herein named, or some of them, engaged in and became parties to the following additional acts, schemes and contracts, among others, in violation of the aforesaid act of July 2, 1890". The additional acts, schemes and contracts described in the petition are the four combinations already considered and one other, namely, that in the year 1899, after the abandonment of the projected New York, Wyoming & Western Railroad, and after the Pennsylvania Coal Company had caused to be organized, under the laws of the state of New York, the Delaware Valley & Kingston Railroad Company, the Erie Railroad Company, through the agency of the banking house of J. P. Morgan & Company, and in violation of the anti-trust act, acquired nearly all the capital stocks of the Pennsylvania Coal Company and the Delaware Valley & Kingston Railroad Company, and thereby defeated the construction of the proposed railroad of the Delaware Valley & Kingston Railroad Company from the Wyoming region to tide-water.

I have not separately considered the charge that the Erie Railroad Company's acquisition of the capital stocks of the Pennsylvania Coal Company and the Delaware Valley & Kingston Railroad Company created an unlawful combination for the reason that there is no specific prayer in the petition for relief as to that particular transaction. It seems to have been embodied in the petition merely because it was supposed to have been one of the "steps" in aid of the alleged general combination or conspiracy. Nor have I separately considered the acquisition, in 1905, of the capital stock of Coxe Brothers & Company by the Lehigh Valley Railroad Com-
834 pany, concerning which much is said in the proofs and the briefs, for the reason that it is not mentioned in the petition, and must therefore be considered merely as a part of the proofs relating to the general charge.

What we are asked to do is to find that in 1895 the defendants "entered into an agreement, scheme, combination or conspiracy", of the broad sweep above mentioned, and that in the development of it they used "as steps" the Erie and Susquehanna combination of 1898, the Temple Iron combination of 1899, the Erie and Pennsylvania Coal Company combination of 1899, the combination formed through the instrumentality of the 65 per cent. contracts in 1900, and the Reading and Central combination of 1901. We are

also asked to consider the acquisition of the capital stock of Coxe Brothers & Company by the Lehigh Valley Railroad Company, in 1905, as an element of proof to support the charge of a general combination or conspiracy. But there is no satisfactory proof that these combinations were parts of or steps to a scheme, entered into by the defendants generally, for the control of the anthracite coal business. They were independent combinations, the first of them having been created three years and the last ten years after it is alleged the general combination or conspiracy was formed. What "contract, combination in the form of trust or otherwise, or conspiracy", for example, existed amongst the defendants generally for the purchase by the Reading Company of the capital stock of the Central? These combinations cannot be tried together in one gigantic trust or conspiracy without proof. They have no common board of control, no common scheme of managing their affairs, and no common business interests. Each of them is wholly separate from and
835 independent of the others. I am satisfied that the proofs fail to show the existence of a general combination or conspiracy of the nature set forth in the petition.

Finding no ground, under the petition as it is framed, on which any part of the relief prayed for can be granted, I think a decree should be entered dismissing the petition on the merits as to the first, third, fourth and fifth combinations above mentioned. As to the second combination, the one known as the Temple Iron combination, I think the petition should be dismissed without prejudice.

836 *Per Curiam:*

The result of the foregoing opinions is, that the Court unanimously agree that the Petition should be dismissed;

(1) As to the charge in paragraph 7*b* of the petition concerning the acquisition by the Erie Railroad Company of the capital stock of the New York, Susquehanna & Western Railroad Company;

837 (2) As to the charge in paragraph 7*c* concerning the acquisition by the Reading Company of the majority of the capital stock of the Central Railroad Company of New Jersey; and

(3) As to the general charge of a combination or conspiracy in violation of the Anti-Trust Act of July 2, 1890, in the development of which it is charged the other combination set forth in the petition were used as steps, set forth in paragraph 7 of the petition.

A majority of the Court hold that the petition should be dismissed as to the charge in paragraph 7*a* of the petition concerning the so-called 65% contracts.

A majority of the Court also hold that the charge of an illegal combination in respect of the matters relating to the Temple Iron Company set forth in paragraph 7*d* of the petition should be sustained, and that the injunction or restraining order specifically prayed for in the petition, should be granted so far as it will serve to prevent and restrain a continuing violation of the Act.

Counsel will be heard as to the form of a decree.

838 *Final Decree. Filed December 20, 1910.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Petitioner,
vs.
THE READING COMPANY et al., Defendants.

Final Decree.

This cause having come to a final hearing upon pleadings and proofs, and having been argued by the counsel of the respective parties on the 21st, 22d, 23rd, and 24th days of February, 1910, in this Court, before the three circuit judges of the third judicial circuit, under the provisions of the Act of Congress known as the Expediting Act of February 11, 1903, and the said pleadings, proofs and arguments having been duly considered by the said judges and their written opinions having been duly filed, it is now, on this 20th day of December, 1910, by the said circuit court, ordered, adjudged and decreed:

First. That the defendants, Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, and The New York, Susquehanna & Western Railroad Company, prior to the time the petition was filed, entered into, and at the time and since the filing of the said petition were and have been joined together in, a combination in restraint of trade and commerce among the several states, by and through the instrumentality of the defendant The Temple Iron Company, in violation of the Act of Congress, approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"; that the shares of the capital stock of The Temple Iron Company, claimed to be owned and held by or in the interest of each of the above named defendants, were acquired and are now held by it or in its
839 interest in pursuance and furtherance of such unlawful combination; and that the shares of capital stock of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, likewise were acquired and are now held in violation of said Act of Congress by the defendant The Temple Iron Company.

Wherefore, the above named defendants, their officers, agents, servants and employees, are enjoined and prohibited from continuing the combination hereby adjudged to be illegal, and from hereafter entering into any like combination in restraint of trade and

commerce among the several states in anthracite coal, in violation of said Act of Congress.

And each and all of the above named defendants, their officers, directors, agents, servants and employees, are hereby restrained and enjoined from hereafter acquiring any shares of The Temple Iron Company; from voting or attempting to vote any of such shares at any meeting of stockholders of said The Temple Iron Company; from collecting or receiving any dividends or other profits thereon; and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts of said corporation. And it is further ordered, adjudged and decreed that The Temple Iron Company be, and it is hereby, restrained and enjoined from permitting shares held by any of said defendants, or any company controlled by any of them, to be voted at any corporate meeting of the said The Temple Iron Company; from paying to any of them any dividends on account of such shares, and from permitting or suffering any of them to exercise any control over its affairs.

And the defendant The Temple Iron Company, its officers, agents, or representatives, are hereby further enjoined from exercising any control over any of the property or assets of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited; from voting the shares of capital stock of such companies; and from receiving any dividends or other profits accruing thereon.

Provided, that nothing herein contained shall be taken as preventing the said defendant, The Temple Iron Company, from selling and disposing of the shares of the capital stocks, assets and properties of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, acquired by it as hereinbefore stated and found to have been acquired by it in violation of the said Act of Congress, to any bona fide purchaser or purchasers not in privity with any of the defendants herein and not sustaining any relation in interest direct or indirect, by trust or otherwise, to or with any of said defendants, and distributing the remainder, if any, of the proceeds thereof after the payment of its bonded and other indebtedness, among the holders of the capital stock of the said defendant, the said The Temple Iron Company.

Second. That the charge made in paragraph seven (*b*) of the petition, concerning the combination by which it is alleged the Erie Railroad Company acquired the capital stock of the New York, Susquehanna & Western Railroad Company, in violation of the act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

Third. That the charge made in paragraph seven (*c*) of the petition concerning the combination by which it is alleged the Reading Company acquired a majority of the capital stock of the

Central Railroad Company of New Jersey, in violation of the act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

841 Fourth. That the general charge in paragraph seven of the petition concerning an alleged combination or conspiracy in violation of the act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, in the development of which it is averred the other combinations set forth in said petition were used as steps, is not sustained, and the petition in respect of that general charge is dismissed.

Fifth. That the charge in paragraph seven (*a*) of the petition concerning an alleged combination for making and maintaining the so-called 65 per cent. contracts is not sustained, and the petition in respect of that charge is dismissed.

Sixth. That the petitioner do recover from Reading Company Philadelphia & Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, and The Temple Iron Company, defendants herein, its taxable costs as to so much of the proceedings as relate to the subject matter of the first paragraph of this decree, and shall have execution therefor.

Seventh. That except as to defendants Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, The Temple Iron Company, Mount Lookout Coal Company, and Lackawanna Coal Company, Limited, in the particulars hereinbefore specified the petition is dismissed.

December 20, 1910.

GEO. GRAY
JOS. BUFFINGTON,
W. M. LANNING,
United States Circuit Judges, Third Circuit.

842 *Petition for Appeal by United States.*

Filed December 20, 1910.

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY, et al., Defendants.

Petition for Appeal by the United States.

The United States of America feeling itself aggrieved by the final decree entered in the above entitled cause on this 20th day of December, 1910, by its counsel comes into open Court and prays an appeal to the present term of the Supreme Court of the United States from all of said decree, except so much and such parts thereof as are contained in paragraphs "First" and "Sixth".

The particulars wherein the United States considers said decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And the United States further prays that a transcript of the record, proceedings and papers on which the decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

December 20th, 1910.

J. C. McREYNOLDS,
G. CARROLL TODD,
Special Assistants to the Attorney General for the United States of America.

Allowed: in open court.

Attest:
HENRY B. ROBB, *Clerk.*

843 *Assignment of Errors by United States.*

Filed December 20, 1910.

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

Assignment of Errors by the United States.

Comes now the United States of America by counsel and in connection with its application for appeal presents in open court the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final decree of this Court pronounced on this 16th day of December, 1910, in the above entitled cause.

The Court erred:

I.

In failing and refusing to sustain the entire petition and in dismissing the same as to any charge therein or as to any party named as defendant.

II.

In failing and refusing to find and declare that each and every defendant had entered into and at the time of the filing of the petition was a party to contracts, combinations in the form of trust or otherwise, or conspiracies, in restraint of trade and commerce
844 among the several States in anthracite coal; and that each and every of the original defendants has monopolized, attempted to monopolize, and combined and conspired with others to monopolize, a part of such trade and commerce—all contrary to the provisions of the Act of Congress of July 2, 1890. And in further failing and refusing by appropriate orders and decrees, specifically to prevent and restrain violations of said Act and the continuation of such contracts, combinations, conspiracies, monopolies, attempts to monopolize, and combinations and conspiracies to monopolize, and the carrying out of the purposes for which the same exist by the arrangements, plans or schemes existing when the petition was filed or any similar thereto.

III.

In failing and refusing to find and adjudge, as charged in paragraph VII of the original petition, that the defendants named in the original petition were, at and prior to the time of the filing of said petition, parties to a combination or conspiracy to suppress com-

petition in and monopolize the transportation and sale of anthracite coal in interstate commerce and control the price thereof, in violation of the Act of Congress of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

IV.

In failing and refusing to find and adjudge, as charged in paragraph VII*a* of the original petition, that the contracts described in said paragraph, made by certain of the defendants and known in the record as 65 per cent. contracts, are in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant
845 appropriate relief thereunto, and in dismissing the petition as to that charge.

V.

In failing and refusing to find and adjudge, as charged in paragraph VII*b* of the original petition, that the acquisition and holding by the defendant Erie Railroad Company of a majority of the shares of the defendant The New York, Susquehanna & Western Railroad Company was and is in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

VI.

In failing and refusing to find and adjudge, as charged in paragraph VII*c* of the original petition, that the acquisition and holding by the defendant Reading Company of a majority of the shares of the defendant The Central Railroad Company of New Jersey was and is in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

VII.

In failing and refusing to find and adjudge, as charged in paragraph VII*c* of the original petition, that the acquisition and holding by the defendant Erie Railroad Company of substantially all the capital stock of the defendant The Pennsylvania Coal Company and of the Delaware Valley & Kingston Railroad Company was and is in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto, and in dismissing the petition as to that charge.

846 VIII.

In failing and refusing to find and adjudge, as charged in paragraph VII of the original petition, that the transactions of defendants referred to in paragraphs IV, V, VI, and VII *and* of this assignment of errors, and the uniting of defendants through The Temple Iron Company, were steps or stages in the growth and development of an unlawful combination and monopoly amongst the

defendants named in said original petition, and in failing and refusing to grant appropriate relief thereunto.

IX.

In failing and refusing to find and adjudge that the acquisition and holding by the defendant Lehigh Valley Railroad Company of the entire capital stock of Coxe Brothers & Company, Incorporated, was and is in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto.

X.

In failing and refusing to find and adjudge that the acquisition and holding by the defendant Erie Railroad Company of the entire capital stock of the defendant The Pennsylvania Coal Company, with the consequent defeat of a projected competing railroad, was and is in violation of the Act of July 2, 1890, among other reasons because in furtherance of one object of the combination or conspiracy which the Court in its final decree adjudged defendants, including the Erie Railroad Company, to have entered into, and in failing and refusing to grant appropriate relief thereunto

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XI.

In failing and refusing to find and adjudge that the United States, having established the combination of defendants through the instrumentality of The Temple Iron Company, which the Court adjudged to be a combination in restraint of interstate commerce, thereby sustained the charge in paragraph VII of the original petition, that the defendants named in said original petition, at and prior to the time of the filing thereof, were parties to a combination or conspiracy to suppress competition in the transportation and sale of anthracite coal in interstate commerce and control the price thereof, in violation of the aforesaid Act of July 2, 1890, and in failing and refusing to grant appropriate relief thereunto.

XII.

In failing and refusing to find and adjudge illegal, because in furtherance of the object of the unlawful combination which the Court in its final decree adjudged defendants to have entered into, those certain perpetual contracts known in the record as 65 per cent. contracts by which the output of the collieries, control of which was acquired by The Temple Iron Company in pursuance of said combination, was bound forever to certain of the parties in said combination.

XIII.

In failing and refusing to find and adjudge that the defendants The Philadelphia & Reading Coal & Iron Company, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Valley Coal Company,

848 The Pennsylvania Coal Company, Hillside Coal & Iron Company, and The New York, Susquehanna & Western Coal Company were and are parties to the combination adjudged unlawful in paragraph "First" of said final decree, and in failing and refusing to restrain and enjoin said defendants in the same manner and to the same extent as the defendants adjudged to be parties to such lawful combination.

XIV.

In failing and refusing to dismiss without prejudice so much of the petition as was dismissed; and also in failing and refusing to dismiss without prejudice in so far as the petition was dismissed as to any defendant.

XV.

In failing and refusing to adjudge the Temple Iron Company to be itself a combination in restraint of trade in violation of the Act of July 2, 1890.

XVI.

In failing to adjudge all costs in favor of the petitioner.

Wherefore the United States prays that the said decree may be corrected and modified.

December 20th, 1910.

J. C. McREYNOLDS,
G. CARROLL TODD,
Special Assistants to the Attorney General,
for the United States of America.

849 *Order Allowing Appeal to United States.*

Filed December 20, 1910.

In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

No. 27. In Equity.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
READING COMPANY and Others, Defendants.

Order Allowing Appeal to the United States.

Be it remembered, that in the above entitled cause on this 20th day of December, 1910, the United States of America appearing by counsel in open court, presented and caused to be filed its petition praying an appeal to the Supreme Court of the United States from

certain specified parts of the final decree this day entered therein, and at the same time presented and caused to be filed its assignment of errors—all as required by the statutes and rules of court. On consideration thereof the Court ordered and decreed that the appeal be allowed as prayed; and the Clerk was directed to transmit forthwith a properly authenticated transcript of the record, papers and proceedings to the Supreme Court of the United States.

December 20th, 1910.

GEO. GRAY,
JOS. BUFFINGTON,
W. M. LANNING,
United States Circuit Judges, Third Circuit.

850 *Subpœna to Erie Railroad Company.*

Filed June 18, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to The Reading Company, the Philadelphia and Reading Railway Company, the [SEAL.] Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, corporations:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of August next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twelfth day of June, 1907, and in the one hundred and thirty first year of the Independence of the said United States.

HENRY B. ROBB,
Clerk of Circuit Court U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of August next, otherwise this Bill may be taken pro confesso.

851 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States of America vs. The Reading Company et al. Filed June 18, 1907. Henry B. Robb, Clerk. by L., Deputy Clerk. Subpœna in Equity. Returnable on the First Monday of August next. J. Whitaker Thompson, Charles J. Bonaparte, Alex. Simpson, Jr., G. Carroll Todd, M. D. Purdy, Solicitors for Complainant. #11920.

I hereby certify, That on the 15th day of June, 1907, at the City of New York, in my district, I served the within Subp. in Equity upon the within named Defendant Erie Railroad Company by exhibiting to David Bosman as Secty. of said Co. at 11 Broadway, N. Y. City the within original, and at the same time leaving with him a copy thereof and at same time & place left with him a certified copy of petition and certified copy of order in this suit.

WILLIAM KUNKEL,
United States Marshal,
Southern District of New York.

Dated June 15, 1907.

J. B. B.

852 *Subpœna to Central Railroad of New Jersey et al.*

Filed June 21, 1907.

UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States to The Reading Company, the Philadelphia and Reading Railway Company, the [SEAL.] Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, corporations:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of August next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this

behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 12th day of June, 1907, and in the one hundred and 31st year of the Independence of the said United States.

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of August next, otherwise this Bill may be taken pro confesso.

853 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States of America vs. The Reading Company et al. Subpœna in Equity. Returnable on the First Monday of August next. Filed June 21, 1907. Henry B. Robb, Clerk. By L., Deputy Clerk. J. Whitaker Thompson, Charles J. Bonaparte, Alex. Simpson, Jr., G. Carroll Todd, M. D. Purdy, Solicitors for Complainant.

Served the within subpœna ad respond. on the defendant, The Central Railroad of New Jersey, at Jersey City, N. J., on the 13th day of June, 1907, by delivering to and leaving with C. D. Van Arsdale, Chief Clerk in the office of C. W. Huntingdon, Registered Agent of the defendant company, The Central Railroad Company of New Jersey, personally, a copy thereof, and at the same time informing said person of its contents.

Also served the within subpœna ad respond. on the defendant The New York, Susquehanna & Western Railroad Company, at Jersey City, N. J., on the 13th day of June, 1907, by delivering to and leaving with George W. Curren, Chief Clerk, in the office of M. E. Johns, Registered Agent of defendant, New York, Susquehanna & Western Railroad Company, personally, a copy thereof, and at the same time informing said person of its contents.

THOMAS J. ALCOTT,
United States Marshal,
District of New Jersey,
By E. R. SEMPLE.

854 UNITED STATES OF AMERICA,
District of New Jersey, ss:

Before me, Edwin R. Semple, a Notary Public of New Jersey, personally appeared Thomas J. Alcott, United States Marshal for the District of New Jersey, who being duly sworn according to law on his oath saith: That in the matter of the United States of America, vs. The Reading Company, et al., he served at Jersey City, N. J., on the 13th day of June, 1907, on the Central Railroad Company of New Jersey, subpœna ad respond., together with a

copy of the original petition and copy the petition and order to summon non-resident defendants, by delivering to and leaving with C. D. Van Arsdale, Chief Clerk in the office of C. W. Huntingdon, Registered Agent of defendant, The Central Railroad Company of New Jersey, said papers, and at the same time informing him of their contents; That he also served at Jersey City, N. J., on the 13th day of June, 1907, on the defendant, the New York, Susquehanna & Western Railroad Company, subpœna ad respond., together with copy of the original petition and copy of the petition and order to summon non resident defendants, by delivering to and leaving with George W. Curren, Chief Clerk, in the office of M. E. Johns, Registered Agent of defendant, New York, Susquehanna & Western Railroad Company, said papers, and at the same time informing him of their contents.

THOMAS J. ALCOTT,
United States Marshal.

Sworn to and subscribed before me this 14th day of June, 1907.

[SEAL.]

EDWIN R. SEMPLE,
Notary Public of New Jersey.

855 *Subpœna to New York, Susquehanna & Western Coal Co.*

Filed July 20, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

[SEAL.]

The President of the United States to The Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, corporations:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of August next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this

you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, at Philadelphia, this twelfth day of June 1907 and in the one hundred and thirty-first year of the Independence of the said United States.

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of August next, otherwise this Bill may be taken pro confesso.

856 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States of America vs. The Reading Company, et al. Filed July 20, 1907. Henry B. Robb, Clerk. Duplicate Subpœna in Equity. Returnable on the First Monday of August next. J. Whitaker Thompson, Charles J. Bonaparte, Alex. Simpson, Jr., G. Carroll Todd, M. D. Purdy, Solicitors for Complainant.

I hereby certify, That on the 16″ day of July, 1907, at the City of New York, in my district, I personally served the within Subpœna in Equity upon the within-named Defendant New York, Susquehanna and Western Coal Company by exhibiting to David Bosman as secretary of said Co. at 11 Broadway N. Y. City the within original and at the same time leaving with him a copy thereof and at same time & place left with him copy of order and copy of Bill of Complaint in this suit.

WILLIAM HENKEL,
United States Marshal, S. D. of New York.

J. J. K.

857 *Subpœna to Reading Co. et al.*

Filed Aug. 5, 1907.

UNITED STATES,
Eastern District of Pennsylvania, sct:

[SEAL.]

The President of the United States to The Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, corporations:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of August next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twelfth day of June 1907 and in the one hundred and thirty first year of the Independence of the said United States.

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of August next, otherwise this Bill may be taken pro confesso.

858 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States of America vs. The Reading Company, et al. Filed Aug. 5, 1907. Henry B. Robb, Clerk. By L., Deputy Clerk. Subpœna in Equity. Returnable on the First Monday of August next. J. Whitaker Thompson, Charles J. Bonaparte, Alex. Simpson, Jr., G. Carroll Todd, M. D. Purdy, Solicitors for Complainant.

JUNE 13TH, 1907.

At Philadelphia in my District served the within writ on The Reading Company, The Philadelphia and Reading Railway Company, The Philadelphia & Reading Coal and Iron Company, The Lehigh and Wilkesbarre Coal Company, and The Temple Iron Company by giving a true and attested copy thereof together with a copy of the Petition of George F. Baer, President of said Companies, also on same date on the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company by giving a like copy of writ and petition to D. G. Baird, Secretary of said Companies and making known the contents of the same to them, and as to The Delaware, Lackawanna & Western Railroad Company, The Central Railroad Company of New Jersey, The Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The Pennsylvania Coal Company, The Hillside Coal & Iron Company & New York and Western Coal Company not found in the District.

So answers.

JOHN B. ROBINSON,
U. S. Marshal.
Per ABRAM B. MYERS, *Deputy.*

859 *Subpœna to Hillside Coal Co. et al.*

Filed Aug. 5, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

[SEAL.]

The President of the United States to The Reading Company, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Central Railroad Company of New Jersey, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkesbarre Coal Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Susquehanna and Western Coal Company, and the Temple Iron Company, corporations:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of August next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered

in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 12th day of June 1907 and in the one hundred and 31st year of the Independence of the said United States.

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of August next, otherwise this Bill may be taken pro confesso.

860 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States of America vs. The Reading Company et al. 6/20/07. Came to hand 1 o'clock P. M. Marshal's Docket No. 479. Chas. B. Witmer, U. S. Marshal. Subpœna in Equity. Filed Aug. 5, 1907. Henry B. Robb, Clerk. By L., Deputy Clerk. Returnable on the First Monday of August next. J. Whitaker Thompson, Charles J. Bonaparte, Alex. Simpson, Jr., G. Carroll Todd, M. D. Purdy, Solicitors for Complainant.

861

SCRANTON, PENNA.

Served the within subpœna on the Hillside Coal Company, at its office in the Borough of Dunmore, in the Middle District of Pennsylvania, on June 25th, 1907, by delivering to the general manager of said Company, W. A. May, personally, a true and attested copy of the same, with the indorsements thereon. At the same time and place I also delivered to the said W. A. May, Manager etc. a copy of the original petition in suit and a copy of the petition and order to summon non-resident defendants as commanded.

So answers.

CHAS. B. WHITMER,
U. S. Marshal, Mid. Dist. of Penna.

By J. W. SNYDER, *Dep.*

Served the within Subpœna on the Pennsylvania Coal Company, at its office in the Borough of Dunmore, in the Middle District of Pennsylvania, on June 25th, 1907, by delivering to the General Manager of said Company, W. A. May, personally, a true and attested copy of the same, with the indorsements thereon. At the same time and place I also delivered to the said W. A. May, Manager etc. a copy of the original petition in suit and a copy of the petition and order to summon non-resident defendants as commanded.

So answers

CHARLES B. WITMER,
U. S. Marshal, Mid. Dist. of Pa.

By J. W. SNYDER, *Dep.*

862 Served the within Subpœna on the Lehigh and Wilkes-Barre Coal Company at its office in the City of Wilkesbarre, in the Middle District of Pennsylvania, on June 21st, 1907, by delivering to the Cashier and Paymaster of said Company, E. W. Marple, personally, a true and attested — of the same with the indorsements thereon. At the same time and place I also delivered to the said E. W. Marple Cashier etc. a copy of the original petition in suit and a copy of the petition and order to summon non-residents as commanded.

So answers

CHARLES B. WITMER,
U. S. Marshal, Mid. Dist. of Penna.

By J. W. SNYDER, *Dep.*

Served the within Subpœna on the Delaware and Lackawanna and Western Railroad Company at its office in the City of Scranton, Pa. in the Middle District of Pennsylvania, on June 24th, 1907, by delivering to the Superintendent of said Company, Edward M. Rine, personally, a true and attested copy of the same, with the indorsements thereon. At the same time and place I also delivered to the said Edward M. Rine, Supt. etc. a copy of the original petition in suit and a copy of the petition and order to summon non-residents as commanded.

So answers

CHARLES B. WITMER,
U. S. Marshal, Mid. Dist. of Penna.

By J. W. SNYDER, *Dep.*

863 Served the within Subpœna on the New York, Susquehanna and Western Railroad Company at its office at Plains, Pa. in the Middle District of Penna. on July 2nd, 1907, by delivering to the Agent of said Company, Robert G. Shotwell, personally, a true and attested copy of the same, with the indorsements thereon. At the same time and place I also delivered to the said Robert G. Shotwell, Agent, etc. a copy of the original petition in suit and a copy of the petition and order to summon non-residents as commanded.

So answers

CHARLES B. WITMER,
U. S. Marshal, Mid. Dist. of Penna.

By J. W. SNYDER, *Deputy.*

864 *Subpœna to William Law.*

Filed November 26, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, the Elk Hill Coal and Iron Company, the St. Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the People's Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parrish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, Mrs. Sarah Drexel Van Rensselaer, as Executrix under the Will of John R. Fell, Deceased; Lafayette Lentz, William O. Lentz, Lewis A. Riley, William Law, John M. Robertson, Richard White, W. R. McTurk, Robert White, Joseph J. Jermyn, in His Own Right; George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, as Executors of John Jermyn, Deceased, and Michael F. Dolphin:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of December next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 22" day of October, 1907, and in the one hundred and 32nd year of the Independence of the said United States.

[SEAL.]

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of December next, otherwise this Bill may be taken pro confesso.

865 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States vs. The Reading Co. et al. Subpœna in Equity. Returnable on the First Monday of December next. Charles J. Bonaparte, M. D. Purdy, J. W. Thompson, G. Carroll Todd, Alex. Simpson, Jr., Solicitors for Complainant. Filed Nov. 26, 1907. Henry B. Robb, Clerk, By L., Deputy Clerk.

Summoned William Law, at Bruffs Island, Talbot County, Maryland, and copy subpœna, petition, and amendment to original petition, left with him, October 28, 1907.

JOHN F. LAUGHAMMER,
U. S. Marshall.

866 *Subpœna to the Mercantile Trust Co. et al.*

Filed November 26, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, the Elk Hill Coal and Iron Company, the St. Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the People's Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parrish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, Mrs. Sarah Drexel Van Rensselaer, as Executrix under the Will of John R. Fell, Deceased; Lafayette Lentz, William O. Lentz, Lewis A. Riley, William Law, John M. Robertson, Richard White, W. R. McTurk, Robert White, Joseph J. Jermyn, in His Own Right; George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, as Executors of John Jermyn, Deceased, and Michael F. Dolphin:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of December next to answer concerning those things which shall then and there be objected against you, and

to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 22" day of October, 1907, and in the one hundred and 32nd year of the Independence of the said United States.

[SEAL.]

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of December next, otherwise this Bill may be taken pro confesso.

867 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States vs. The Reading Co. et al. Subpœna in Equity. Returnable on the First Monday of December, next. Charles J. Bonaparte, M. D. Purdy, J. W. Thompson, G. Carroll Todd, Alex. Simpson, Jr., Solicitors for Complainant. Filed Nov. 26, 1907. Henry B. Robb, Clerk, By L., Deputy Clerk.

I hereby certify, That on the 23 day of October, 1907, at the City of New York, in my district, I served the within subpœna in equity upon the within named defendant The Mercantile Trust Co. at #120 Broadway, N. Y. City by exhibiting to Guy Richards as Secretary of said Company the within originals, and at the same time leaving with him a copy thereof and a copy of the original petition and amended petition in this action.

I hereby further certify, That on the 23 day of October, 1907, at the City of New York, in my district, I served the within subpœna in equity upon the within named defendant The Delaware & Hudson Co. at #32 Nassau Street, N. Y. City by exhibiting to F. Murray Olyphant as Secretary of said Company the within originals, and at the same time leaving with him a copy thereof and a copy of the original petition and amended petition in this action.

I hereby further certify, That on the 23 day of October, 1907, at the City of New York, in my district, I served the within subpœna in equity upon the within named defendant The Elk Hill Coal & Iron Co. at #56 Beaver St., N. Y. City by exhibiting to John B. Kerr as Vice President of said Company the within originals, and at the same time leaving with him a copy thereof and a copy of the original petition and amended petition in this action.

WILLIAM HENKEL,
United States Marshal,
Southern District of New York.

Dated New York Oct. 23, 1907.

(J. J. K.)

868 *Subpœna to The Mellville Coal Company et al.*

Filed November 30, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, the Elk Hill Coal and Iron Company, the St. Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the People's Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, Mrs. Sarah Drexel Van Rensselaer, as Executrix under the Will of John R. Fell, Deceased; Lafayette Lentz, William O. Lentz, Lewis A. Riley, William Law, John M. Robertson, Richard White, W. R. McTurk, Robert White, Joseph J. Jermyn, in His Own Right; George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, as Executors of John Jermyn, Deceased, and Michael F. Dolphin; A. Pardee and Company of Hazelton, Pa.:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of December next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 22" day of October, 1907, and in the one hundred and 32nd year of the Independence of the said United States.

[SEAL.]

HENRY B. ROBB,
Clerk of Circuit Court, U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of December next, otherwise this Bill may be taken pro confesso.

869 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States vs. The Reading Co. et al. Subpœna in Equity. Returnable on the First Monday of December next. Charles J. Bonaparte, M. D. Purdy, J. W. Thompson, G. Carroll Todd, Alex. Simpson, Jr., Solicitors for Complainant. Filed Nov. 30, 1907. Henry B. Robb, Clerk, By L., Deputy Clerk.

OCT. 23, 1907.

Come to hand 9 o'clock A. M. Marshal's Docket No. 479 & 485.

CHAS. B. WITMER,
U. S. Marshal.

LUZERNE BORO, PA., *Nov.* 8, 1907.

Service on the within writ of Subpœna in Equity accepted and copy received also copy of petition and copy of amendment to original petition on the above date.

RAUB COAL CO.
W. T. PAYNE, *Pres't.*

870 Served the within Subpœna in Equity on the Mellville Coal Company by delivering to Henry H. Brady, President of said company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Henry H. Brady, Pres., a copy of the original petition in suit and the amendment to the original petition. Service made at Scranton, Pa., Oct. 30th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

Served the within Subpœna in Equity on the Mount Lookout Coal Company by delivering to Adelbert M. Bingham, Treasurer of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Adelbert M. Bingham, Treas., a copy of the original petition in suit and the amendment to the original petition. Service made at Scranton, Pa., Oct. 30th, 1907.

So answers,

CHARLES B. WITMER,
——— ———.

By J. W. SNYDER,
Deputy U. S. Marshal.

Served the within Subpœna in Equity on the Nay Aug Coal Company by delivering to M. S. Knight, Secretary and Treasurer of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said M. S. Knight, Sec'ty. & Treas., a copy of the original petition and the amendment to the original pet. Service made at Scranton, Pa., Oct. 30th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

871 Served the within Subpœna in Equity on the Lackawanna Coal Company by delivering to Adelbert M. Bingham, Treasurer of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Adelbert M. Bingham, Treas., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., Oct. 30th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

Served the within Subpœna in Equity on the Austin Coal Company by delivering to C. P. Mathews, Treasurer of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said C. P. Mathews, Treas., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., Oct. 30th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

Served the within Subpœna in Equity on the Clarence Coal Company by delivering to W. A. May, Manager of said company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said W. A. May, Mgr., a copy of the original petition in suit, and the amendment to the original petition. Service made at Dunmore, Pa., October 31st, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

872 Served the within Subpœna in Equity on Joseph J. Jermyn, personally by delivering to the said Joseph J. Jermyn

a true and attested copy of the same, at the same time and place I also delivered to the said Joseph J. Jermyn a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., Oct. 31st, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER,
Deputy U. S. Marshal.

Served the within Subpœna in Equity on the Enterprise Coal Company, by delivering to William L. Connell, Treas., of said company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said William L. Connell, Treas., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 1st, 1907.

So answers,

CHARLES B. WITMER.
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within Subpœna in Equity on the North End Coal Company by delivering to William L. Connell, Pres. of said company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said William L. Connell, Pres., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 1st, 1907.

So answers,

CHARLES B. WITMERS,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

873 Served the within Subpœna in Equity on the Greenridge Coal Company by delivering to William L. Connell, Treasurer of said company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said William L. Connell, Treas., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 1st, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within Subpœna in Equity on the John Jermyn Estate by delivering to Emma J. Jermyn Mears, Executor of said Estate, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Emma J. Jermyn, Executor, a

copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 1st, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within Subpœna in Equity on the Peoples' Coal Company by delivering to James G. Shepherd, President of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said James G. Shepherd, Pres., a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 7th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

874 Served the within subpœna in Equity on the Parrish Coal Company by delivering to George P. Lindsey, Secretary of said Company, personally a true and attested copy of the same, at the same time and place I also delivered to the said George P. Lindsey, Sec'ty., a copy of the original petition in suit, and the amendment to the original petition. Service made at Plymouth, Pa., November 8th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within subpœna in Equity on the Red Ash Coal Company by delivering to Walter Roberts, Secretary of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Walter Roberts, Sec., a copy of the original petition in suit, and the amendments to the original petition. Service made at Wilkes-Barre, Pa., November 8th, 1907.

So Answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within subpœna in equity on the Raub Coal Company by delivering to J. B. Blackman, Purchasing Agent, of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said J. B. Blackman, Purchasing Agent, a copy of the original petition in suit, and the amendments to the original petition.

Service made at Luzerne, Pa., November 8th, 1907.

So Answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within subpœna in Equity on the George F. Lee Coal Company by delivering to George F. Lee, Treas. of said Company, personally a true and attested copy of the same, at the same time and place I also delivered to the said George F. Lee, Treas., a copy of the original petition in suit, and the amendments to the original petition. Service made at Dorranceton, Pa., November 8th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within subpœna in Equity on John M. Robertson, by delivering to John M. Robertson, personally, a true and attested copy of the same, at the same time and place I also delivered to the said John M. Robertson, a copy of the original petition in suit, and the amendment to the original petition. Service at Moosic, Pa., November 9th, 1907.

So answers,

CHARLES B. WITMER.
U. S. Marshal.

By J. W. SNYDER.

875 Served the within subpœna in Equity on the Clear Spring Coal Company by delivering to Joseph I. Cake, Treas. of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Joseph I. Cake, Treas., a copy of the original petition in suit, and the amendment to the original petition.

Service made at West Pittston, Pa., November 9th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within Subpœna in Equity on the Pardee Coal Company by delivering to Frank Pardee, Manager of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Frank Pardee, Mgr., a copy of the original petition in suit, and the amendment to the original petition.

Service made at Hazleton, Pa., November 11th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By J. W. SNYDER, *Deputy.*

Served the within subpœna in Equity on the Dolph Coal Company by delivering to W. G. Robertson, Mgr., of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said W. G. Robertson, Mgr., a copy of

the original petition in suit, and the amendment to the original petition.

Service made at Jessup, Pa., November 11th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

Served the within subpœna in Equity on the John Jermyn Estate by delivering to George B. Jermyn, Executor of said Estate, personally, a true and attested copy of the same, at the same time and place I also delivered to the said George B. Jermyn, Executor, a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 11th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

Served the within subpœna in Equity on the Llewellyn Coal Company by delivering to William Llewellyn, President of said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said William Llewellyn, Pres., a copy of the original petition in suit, and the amendment to the original petition. Service made at Shamokin, Pa., October 26th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

876 Served the within subpœna in Equity on Michael F. Dolphin by delivering to the said Michael F. Dolphin, personally, a true and attested copy of the same, at the same time and place I also delivered to the said Michael F. Dolphin, a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., Nov. 11th, '07.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

Served the within subpœna in Equity on the Price-Pancoast Coal Company by delivering to William Widdofield, Purchasing Agent for said Company, personally, a true and attested copy of the same, at the same time and place I also delivered to the said William Widdofield, Purch. Agent, a copy of the original petition in suit, and the amendment to the original petition. Service made at Scranton, Pa., November 11th, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

The above service on the Dolph Coal Company has been accepted by E. S. Dolph, Secretary of said company, personally, this 21st day of November, 1907.

So answers,

CHARLES B. WITMER,
U. S. Marshal.

By H. J. EVANS, *Deputy.*

877 *Subpœna to The Pennsylvania Company for Insurances on Lives and Granting Annuities et al.*

Filed December 4, 1907.

UNITED STATES,
Eastern District of Pennsylvania, ss:

The President of the United States to The Pennsylvania Company for Insurances on Lives and Granting Annuities, The Mercantile Trust Company, The Delaware and Hudson Company, the Elk Hill Coal and Iron Company, the St. Clair Coal Company, the Enterprise Coal Company, the Pine Hill Coal Company, the Buck Run Coal Company, the Llewellyn Mining Company, the Clear Spring Coal Company, the Pancoast Coal Company, the Price-Pancoast Coal Company, the Mount Lookout Coal Company, the People's Coal Company, the George F. Lee Coal Company, the North End Coal Company, the Melville Coal Company, the Parrish Coal Company, the Red Ash Coal Company, the Raub Coal Company, the Mid Valley Coal Company, the Austin Coal Company, the Clarence Coal Company, the Nay Aug Coal Company, the Green Ridge Coal Company, the Excelsior Coal Company, the Lackawanna Coal Company, Limited, the Dolph Coal Company, Limited, Mary F. W. Howe, Frank Pardee, Mrs. Sarah Drexel Van Rensselaer, as Executrix under the Will of John R. Fell, Deceased; Lafayette Lentz, William O. Lentz, Lew[illegible] A. Riley, William Law, John M. Robertson, Richard White, W. R. McTurk, Robert White, Joseph J. Jermyn, in His Own Right; George B. Jermyn, Emma J. Jermyn, and Joseph J. Jermyn, as Executors of John Jermyn, Deceased, and Michael F. Dolphin:

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, We Command and strictly enjoin you, and each of you that laying all other matters aside and notwithstanding any excuse, you and each of you personally be and appear before the Judges of the said Court, at a session of the same Court to be holden at Philadelphia, on the first Monday of December next to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of Four Hundred Dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, at Philadelphia, this 22" day of October, 1907, and in the one hundred and 32nd year of the Independence of the said United States.

[SEAL.] HENRY B. ROBB,
Clerk of Circuit Court U. S.

NOTE.—The Defendants in this case are required to enter their appearance in the Clerk's Office of said Court, on or before the first Monday of December next, otherwise this Bill may be taken pro confesso.

878 [Endorsed:] No. 27. Circuit Court, April Session, 1907. The United States vs. The Reading Co. et al. Filed Dec. 4, 1907. Henry B. Robb, Clerk. By L., Deputy Clerk. Subpœna in Equity. Returnable on the First Monday of December next. Charles J. Bonaparte, M. D. Purdy, J. W. Thompson, G. Carroll Todd, Alex. Simpson, Jr., Solicitors for Complainant.

I accept service for the Pennsylvania Company for Insurances on Lives and Granting Annuities.

JOHN G. JOHNSON.

Oct. 23, 1907.

I accept service for Lafayette Lentz.
Nov. 12, 1907.

——— ———.

NOVEMBER, 12TH, 1907.

At Philadelphia in my District served the within writ on Mid Valley Coal Company by giving a true and attested Copy thereof together with a copy of the Petition and amended Petition to H. B. Price, Secretary and Treasurer of said Company and making known the contents of the same to him.

So answers,

JOHN B. ROBINSON,
U. S. Marshal,
Per ABRAM B. MYERS, *Deputy.*

In my district served the within writs together with petitions and Amended Petitions on the following defendants October 23, 1907, at Phila. on the Pennsylvania Company for the Insurance of Lives and granting annuities at the Land Title office by leaving copies with John G. Johnson accepting service, October 25, '07. In Cross Township Sch. Co. on the Pine Hill Coal Company by leaving copies with Geo. M. Kaiser, Superintendent at their office, Oct. 25, 1907, at Foster Township Schuylkill Co. on the Buck Run Coal Company by leaving copies with James B. Neede President of Company, Oct. 26, 1907, at Wadesville in Schuylkill County on Robert White and Richard White by giving each of them copies. On Oct. 26th on the said Saint Clair Coal Company by leaving copies with W. T. Smith, Superintendent, at their office. October 30th, 1907, on Mary Howe

at her dwelling 1622 Locust St., Phila., by giving her copies. Oct. 26th, 1907, at Phila., Sarah Drexel Van Rensselaer, executrix of the estate of John Fell deceased by leaving copies at *their* dwelling with Theodore Anderson Chef an adult, October 31st, 1907, at Philada. on W. R. McTurk by leaving copies at his dwelling with an adult to wit Mary Albright. On Nov. 10th, 1907, at Phila., at 1088 4th St., Phila., on Lewis A. Riley and W. O. Wents by giving them each copies. On Nov. 6th, 1907, on Lafayette Wentz by leaving copies with Sam'l Dixon attorney accepting service.

So answers

JOHN B. ROBINSON,
United States Marshal,
Pr. PETER D. HELMS, *Deputy.*

879 [*Appearances of Counsel.*]

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Appearances of counsel were entered in due form as follows:

For the United States:

Charles J. Bonaparte.
Milton D. Purdy.
J. C. McReynolds.
Alexander Simpson, Jr.
J. Whitaker Thompson.
G. Carroll Todd.

For defendants:

Alexander & Green, entered Dec. 2, 1907, for Mercantile Trust Co.

Thomas H. Atherton, entered Dec. 2, 1907, for Red Ash Coal Co.

George R. Bedford, entered Dec. 2, 1907, for Raub Coal Co. and Clear Spring Coal Co.

J. Claude Bedford, entered December 2, 1907, for St. Clair Coal Co., Richard White and Robert White.

George F. Brownell, entered Aug. 5, 1907, for Erie Railroad Co. and Pennsylvania Coal Co.

J. E. Burr, entered Dec. 2, 1907, for Elk Hill Coal & Iron Co. and Price-Pancoast Coal Co.

Collins & Corbin, entered Aug. 5, 1907, for The New York, Susquehanna & Western Railroad Co. and The New York, Susquehanna & Western Coal Co.

880 Benjamin W. Cumming, Jr., entered Dec. 2, 1907, for Buck Run Coal Co.

Robert W. de Forest, entered Aug. 3rd, 1907, for The Central Railroad Co. of New Jersey and The Lehigh & Wilkes-Barre Coal Co.

Samuel Dickson, entered Aug. 5, 1907, for The Central Railroad Company of New Jersey and The Lehigh & Wilkes-Barre Coal Co.; Dec. 2, 1907, for Lafayette Lentz, William O. Lentz and Lewis A. Riley; and January 13, 1908, for Midvalley Coal Co.

William Drayton, entered Dec. 2, 1907, for Sarah Drexel Van Rensselaer.

Charles Heebner, entered Aug. 5, 1907, for Philadelphia and Reading Railway Co., The Philadelphia and Reading Coal and Iron Co. and Reading Co.

W. H. Jessup, entered Dec. 2, 1907, for William Law and John M. Robertson, copartners, trading as Robertson & Law.

John G. Johnson, entered August 2, 1907, for Lehigh Valley Railroad Co. and The Lehigh Valley Coal Co.; Oct. 24, 1907, for The Pennsylvania Company for Insurances on Lives and Granting Annuities, and Nov. 9, 1907, for Mary F. W. Howe, Frank Pardee and Sarah Drexel Van Rensselaer, copartners, trading as A. Pardee & Co.

H. Gordon McCouch, entered Dec. 2, 1907, for Mid Valley Coal Co.

John McGahren, entered Dec. 2, 1907, for George F. Lee Coal Co.

Benjamin R. Jones, entered Dec. 2, 1907, for Red Ash Coal Co.

William S. Opdyke, entered Nov. 11, 1907, for The Delaware & Hudson Co.

H. W. Palmer, entered Dec. 2, 1907, for the Parrish Coal Co. and Dolph Coal Co.

R. H. Patterson, entered Dec. 2, 1907, for People's Coal Co.

Jackson E. Reynolds, entered Feb. 24, 1910, for The Central Railroad Co. of New Jersey, and The Lehigh & Wilkes-Barre Coal Co.

John L. Seager, entered Aug. 5, 1907, for The Delaware, Lackawanna & Western Railroad Co.

Herbert A. Taylor, entered Aug. 5, 1907, for Hillside Coal & Iron Co., and Dec. 2, 1907, for Clarence Coal Co.

James H. Torrey, entered Nov. 11, 1907, for The Delaware & Hudson Co.

881 W. W. Watson, entered Dec. 2, 1907, for Austin Coal Co.

Wells & Torrey, entered Nov. 7, 1907, for Joseph J. Jermyn and George B. Jermyn, Emma Jermyn and Joseph J. Jermyn, Executors of John Jermyn, deceased; and Dec. 2, 1907, for Enterprise Coal Co., North End Coal Co., People's Coal Co. and Green Ridge Coal Co.

Thomas F. Wells, entered Dec. 2, 1907, for Nay Aug Coal Co. and Pine Hill Coal Co.

Willard, Warren & Knapp, entered Aug. 2, 1907, for Temple Iron Co., and Dec. 2, 1907, for Mount Lookout Coal Co., Lackawanna Coal Co., Ltd., Melville Coal Co. and Michael F. Dolphin.

HENRY B. ROBB,
Clerk United States Circuit Court, E. D. Pa.

882 In the Supreme Court of the United States, October Term, 1910.

No. 859.

TEMPLE IRON COMPANY, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

883 In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING CMPANY et al., Defendants.

Petition for Appeal by the Temple Iron Company, One of the Above Named Defendants.

Filed January 3, 1911.

The Temple Iron Company feeling itself aggrieved by the final decree entered in the above entitled cause on the 20th day of December, 1910, by its counsel, prays an appeal to the present term of the Supreme Court of the United States from so much of said decree as is contained in the First and Sixth paragraphs thereof.

The particulars wherein the Temple Iron Company considers said decree as to these paragraphs erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

And also that an order be made fixing the amount of security which the defendant, the Temple Iron Company, shall furnish upon such appeal, and that upon giving such security all further proceedings in this court shall be stayed until the determination of said appeal by the Supreme Court of the United States.

And the Temple Iron Company further prays that a transcript of the record, proceedings and papers on which the decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

And your petitioner will ever pray, etc.

January 3rd, 1911.

EVERETT WARREN,
Solicitor for the Temple Iron Company.

884 In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING CMPANY et al., Defendants.

Assignment of Errors by the Temple Iron Company.

Filed January 3, 1911.

Comes now the Temple Iron Company by counsel and in connection with its application for appeal presents the following assignments of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final decree of this Court pronounced on the 16th day of December, 1910, in the above entitled cause:

The Court erred:

I.

In decreeing:

That the defendants, Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company and The New York, Susquehanna & Western Railroad Company, prior to the time the petition was filed, entered into, and at the time and since the filing of the said petition were and have been joined together in a combination in restraint of trade and commerce among the several states, by and through the instrumentality of the defendant The Temple Iron Company, in violation of the Act of Congress, approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that the shares of the capital stock of The Temple Iron Company, claimed to be owned and held by or in the interest of each of the above named defendants, were acquired and are now held by it or in its interest in pursuance and furtherance of such unlawful
885 combination; and that the shares of capital stock of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company and Lackawanna Coal Company, Limited, likewise were acquired and are now held in violation of said Act of Congress by the defendant The Temple Iron Company.

Wherefore, the above named defendants, their officers, agents, servants and employees, are enjoined and prohibited from continuing the combination hereby adjudged to be illegal, and from hereafter entering into any like combination in restraint of trade and commerce among the several states in anthracite coal, in violation of said Act of Congress.

And each and all of the above named defendants, their officers, agents, servants and employees, are enjoined and prohibited from continuing the combination hereby adjudged to be illegal, and from hereafter entering into any like combination in restraint of trade and commerce among the several states in anthracite coal, in violation of said Act of Congress.

And each and all of the above named defendants, their officers, directors, agents, servants and employees, are hereby restrained and enjoined from hereafter acquiring any shares of The Temple Iron Company; from voting or attempting to vote any of such shares at any meeting of stockholders of said The Temple Iron Company; from collecting or receiving any dividends or other profits thereon; and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts of said corporation. And it is further ordered, adjudged and decreed that The Temple Iron Company be, and it is hereby, restrained and enjoined from permitting shares held by any of said defendants, or any company controlled by any of them, to be voted at any corporate meeting of the said The Temple Iron Company; from paying to any of them any dividends on account of such shares, and from permitting or suffering any of them to exercise any control over its affairs.

And the defendant The Temple Iron Company, its officers, agents or representatives, are hereby further enjoined from exercising any control over any of the property or assets of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited; from voting the shares of capital stock of such companies; and from receiving any dividends or other profits accruing thereon.

Provided, that nothing herein contained shall be taken as
886 preventing the said defendant, The Temple Iron Company, from selling and disposing of the shares of the capital stocks, assets and properties of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, acquired by it as hereinbefore stated and found to have been acquired by it in violation of the said Act of Congress, to any bona fide purchaser or purchasers not in privity with any of the defendants herein and not sustaining any relation in interest direct or indirect, by trust or otherwise, to or with any of the said defendants, and distributing the remainder, if any, of the proceeds thereof after the payment of its bonded and other indebtedness, among the holders of the capital stock of the said defendant, the said The Temple Iron Company.

II.

In decreeing:

That the petitioner do recover from Reading Company, Philadelphia & Reading Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New

[illegible], Susquehanna & Western Railroad Company, and The Temple [illegible] Company, defendants herein, its taxable costs as to so much of the proceedings as relate to the subject matter of the first paragraph of said decree, and shall have execution therefor.

III.

In failing and refusing to dismiss the petition as to the allegations in the seventh paragraph, division (*d*), of said petition and dismissing the petition in respect of the charge therein contained, the proofs in the case not warranting the decrees as to the Temple Iron Company transactions contained in the first and sixth paragraphs of said decree.

Wherefore the Temple Iron Company prays that the said decree may be corrected and modified.

EVERETT WARREN,
Solicitor for Temple Iron Co.

887 In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

Order Allowing Appeal to the Supreme Court of the United States and Supersedeas.

Filed January 3, 1911.

Be it Remembered, that in the above entitled cause, on the third day of January, 1911, the Temple Iron Company appearing by counsel, presented and caused to be filed its petition praying an appeal to the Supreme Court of the United States from certain specified parts of the final decree entered the 20th day of December, 1910, and at the same time presented and caused to be filed its assignment of errors—all as required by the statutes and rules of Court. On consideration thereof it is ordered and decreed that the appeal be allowed as prayed, and the Clerk was directed to transmit forthwith a properly authenticated transcript of the record, papers and proceedings to the Supreme Court of the United States.

It is further ordered and decreed that the bond for costs on said appeal shall be and the same is hereby fixed at $2000.00, and upon entry of such bond with surety satisfactory to the Court, all further proceedings in this Court shall be stayed until the determination of said appeal of The Temple Iron Company by the Supreme Court of the United States.

GEO. GRAY, *C. J.*

Attest:

—— ——, *Clerk.*

January 1911.

888

Bond Sur Appeal.

Filed January 5, 1911.

Know all men by these presents, That we Temple Iron Company, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto The United States of America in the full and just sum of Two thousand dollars ($2,000.) to be paid to the said The United States of America; to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of January, in the year of our Lord one thousand nine hundred and eleven (1911).

Whereas, lately at a session of the Circuit Court of the United States for the Eastern District of Pennsylvania in a suit depending in said Court, between said the United States of America, Plaintiff, and said Temple Iron Company, et al., Defendants, as of No. 27 April Sessions, 1907, In Equity, a decree was rendered against the said The Temple Iron Company, and the said Temple Iron Company having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden, at the city of Washington, within thirty days.

Now, the condition of the above obligation is such, That if the said Temple Iron Company shall prosecute its appeal to effect, and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

TEMPLE IRON COMPANY.
By GEO. F. BAER, *President.*

Attest:
[SEAL.] A. W. BINGHAM, *Secretary.*

UNITED STATES FIDELITY AND GUARANTY COMPANY.
By HENRY STROUSE,
Resident Vice President.

Attest:
FRANK M. FLYNN, [SEAL.]
Resident Secretary.

Before Gray, Cir. J.

Bond approved.
By the Court.
Attest:
GEORGE BRODBECK,
Deputy Clerk.
1/5/11.

889 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the City of Washington, District of Columbia, within thirty days, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein The Temple Iron Company is Appellant and you are Appellee to show cause, if any there be, why the decree rendered against the said Appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George Gray, Judge, holding Circuit Court of the United States this fifth day of January, in the year of our Lord one thousand nine hundred and eleven.

GEO. GRAY, *C. J.*

Service accepted.

G. CARROLL TODD,
Att'y for Appellee.

[Endorsed:] 27. Apr. S., 1907. U. S. v. Reading Co. et al. Citation. L.

890 In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Session, 1907.

No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

Præcipe Sur Transcript of Record Sur Appeal of Temple Iron Company.

Filed January 7, 1911.

SIR: In making up the transcript of record to the Supreme Court of the United States in the above entitled action sur appeal of Temple Iron Company, you are directed to include the following papers and no others, to wit:—

1. Petition of Temple Iron Company for allowance of appeal and supersedeas,
2. Assignment of Errors by Temple Iron Company,
3. Order allowing appeal of Temple Iron Company and supersedeas,
4. Bond of Temple Iron Company sur appeal,
5. Citation.

EVERETT WARREN,
Solicitor for Temple Iron Company,
By WM. F. KINTER.

To Clerk C. C. U. S. E. D. of Penna.

891 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Henry B. Robb, Clerk of the Circuit Court of the United States of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original Pleas and proceedings in the case of United States of America v. The Reading Company, et al., No. 27, April Session, as per præcipe filed, a copy of which is hereto annexed, on file and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this eleventh day of January in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

[SEAL.] HENRY B. ROBB, *Clerk of C. C.*,
By GEORGE BRODBECK,
Deputy Clerk.

892 *Transcript of Record to the Supreme Court of the United States.*

October Term, 1910.

No. 901.

THE READING COMPANY, THE PHILADELPHIA AND READING RAILway Company, The Central Railroad of New Jersey, The Delaware, Lackawanna & Western Railroad Company, The Lehigh Valley Railroad Company, The Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, The Mount Lookout Coal Company, and The Lackawanna Coal Company, Limited, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

893 In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE READING COMPANY and Others, Defendants.

Petition for Appeal.

Filed January 28, 1911.

The Reading Company, the Philadelphia & Reading Railway Company, The Central Railroad of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company and the Lackawanna Coal Company, Limited, defendants herein, feeling aggrieved by the final decree entered in this cause on the 20th day of December, 1910, do hereby appeal to the present term of the Supreme Court of the United States from so much of the said decree as is contained in the First and Sixth paragraphs thereof, and pray that this appeal may be allowed.

894 The particulars wherein the said defendants consider said decree as to these paragraphs erroneous are set forth in the assignment of errors herein filed to which reference is made; and your petitioners further pray that an order be made fixing the amount of security which the said defendants shall furnish upon such appeal, and that upon giving such security all further proceedings in this Court shall be stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioners further respectfully request that, if that part of the decree contained in said First Paragraph of said decree herein stands in full force and effect until said appeal is heard, your petitioners will suffer great and irreparable injury, as more fully appears from the record in this cause upon which this Court based its decision of this cause, and

Your petitioners pray this Honorable Court to order that said appeal and said bond operate to stay and suspend the operation and effect of that part of said decree contained in said First Paragraph of said decree and the injunction granted thereby or in pursuance thereof until said appeal is heard and decided.

And your petitioners further pray that a transcript of the record, proceedings and papers on which the decree was made and entered,

duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

And your petitioners will ever pray etc.

(S'g'd) CHAS. HEEBNER,
Solicitors for the Appellants the Reading Company and the Philadelphia & Reading Railway Company.

ROBERT W. DE FOREST,
Per J. W. BAYARD,
Solicitors for the Appellant The Central Railroad Company of New Jersey.

895

WILLIAM S. JENNEY,
Per J. W. BAYARD,
Solicitors for the Appellant The Delaware, Lackawanna & Western Railroad Company.

J. F. SCHAPERKOTTER.
JOHN G. JOHNSON,
Per J. W. BAYARD,
Solicitor for the Appellant the Lehigh Valley Railroad Company.

ADELBERT MOOT,
GEO. F. BROWNELL,
HERBERT A. TAYLOR,
Per J. W. BAYARD,
Solicitors for the Appellants the Erie Railroad Company and The New York, Susquehanna & Western Railroad Company.

EVERETT WARREN,
Per W. L. KINTER,
Solicitors for the Appellants the Mount Lookout Coal Company and the Lackawanna Coal Company, Limited.

896 In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY et al., Defendants.

Assignments of Error.

Filed January 28, 1911.

And now come the appellants, the Reading Company, the Philadelphia & Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company and the Lackawanna Coal Company, Limited, by their several Solicitors, and say that in the record and proceedings herein there is manifest error, and that the United States Circuit Court for the Eastern District of Pennsylvania erred in this, to-wit:

897 1. In holding and deciding that the defendants, the Reading Company, Philadelphia & Reading Railway Company, Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company and The New York, Susquehanna & Western Railroad Company, prior to the time the petition was filed, entered into and at the time and since the filing of the said petition were and have been joined together in, a combination in restraint of trade and commerce among the several States, by and through the instrumentality of the defendant The Temple Iron Company, in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

2. In holding and deciding that the shares of the capital stock of The Temple Iron Company claimed to be owned and held by or in the interest of each of the above-named defendants, were acquired and are held by it or in its interest in pursuance and furtherance of such unlawful combination.

3. In holding and deciding that the shares of the capital stock of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mt. Lookout Coal Company, Forty Fort Coal Company and Lackawanna Coal Company, Limited, were acquired and are held in violation of said Act of Congress by the defendant The Temple Iron Company.

4. In enjoining the defendants, their officers, directors, agents, servants and employés, from hereafter acquiring any shares of The Temple Iron Company.

5. In enjoining the defendants from voting or attempting to vote any of such shares at any meeting of the stockholders of The Temple Iron Company.

898 6. In enjoining the defendants from collecting or receiving any dividends, or other profits, from the shares of The Temple Iron Company.

7. In enjoining the defendants from exercising or attempting to exercise any control, direction, supervision or influence over the acts of The Temple Iron Company.

8. In enjoining The Temple Iron Company from permitting its shares held by any of the said defendants, or by any Company controlled by any of them, to be voted at any corporate meeting of The Temple Iron Company.

9. In enjoining The Temple Iron Company from paying to any of the defendants any dividends on account of its shares.

10. In enjoining The Temple Iron Company from permitting or suffering any of the defendants to exercise any control over its affairs.

11. In enjoining The Temple Iron Company, its officers, agents and representatives, from exercising any control over any of the property or assets of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mt. Lookout Coal Company, Forty Fort Coal Company and Lackawanna Coal Company, Limited.

12. In enjoining The Temple Iron Company, its officers, agents and representatives, from voting the shares of the capital stock of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mt. Lookout Coal Company, Forty Fort Coal Company and Lackawanna Coal Company, Limited.

13. In enjoining The Temple Iron Company, its officers, agents and representatives, from receiving any dividends or other profits accruing on the shares of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal
899 Company, Mt. Lookout Coal Company, Forty Fort Coal Company and Lackawanna Coal Company, Limited.

14. In decreeing that the plaintiff, the United States of America, do recover from the defendants, the Reading Company, Philadelphia & Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna & Western Railroad Company and The Temple Iron Company, its taxable costs as to so much of the

proceedings as relate to the subject matter of the first paragraph of said decree and have execution therefor.

Wherefore, the appellants pray that said judgment and decree of said Circuit Court of the United States for the Eastern District of Pennsylvania may be reversed in all things.

(Sgd.) CHAS. HEEBNER,
Solicitors for the Appellants, The Reading Company and The Philadelphia & Reading Railway Company.
ROBERT W. DE FOREST,
Per J. W. BAYARD,
Solicitors for The Central Railroad Company of New Jersey.
WILLIAM S. JENNEY,
Per J. W. BAYARD,
Solicitors for The Delaware, Lackawanna and Western Railroad Company.
J. F. SCHAPERKOTTER.
JOHN G. JOHNSON,
Per J. W. BAYARD,
Solicitors for the Lehigh Valley Railroad Company.

900 ADELBERT MOOT,
GEO. F. BROWNELL,
HERBERT A. TAYLOR.
Per J. W. BAYARD,
Solicitors for The Erie Railroad Company and The New York, Susquehanna & Western Railroad Company.
EVERETT WARREN,
Per W. L. KINTER,
Solicitors for The Mount Lookout Coal Company and The Lackawanna Coal Company, Limited.

901 In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

Order Allowing Appeal to the Supreme Court of the United States and Supersedeas.

Filed January 28, 1911.

Be it remembered, that in the above-entitled cause, on this 28th day of January, 1911, the defendants, the Reading Company, the Philadelphia & Reading Railway Company, The Central Railroad

Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company and the Lackawanna Coal Company, Limited, appearing by counsel, presented and caused to be filed their petition, praying an appeal to the Supreme Court of the United States from so much of the final decree
902 entered herein the 20th day of December, 1910, as is contained in the First and Sixth Paragraphs thereof, and at the same time presented and caused to be filed their assignments of error, all as required by the statutes and rules of the Court. On consideration thereof, it is ordered and decreed that the appeal from said specified parts of said decree be allowed as prayed and the Clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers and proceedings to the Supreme Court of the United States.

It is further ordered and decreed that a single bond for costs on said appeal shall be executed by all the appellants and the amount of the same is hereby fixed at $2,000 and upon entry of such bond, with a surety satisfactory to the Court, all further proceedings in this Court shall be stayed until the determination of said appeal by the Supreme Court of the United States. And

It is further ordered and decreed that, upon entry of said bond with surety satisfactory to the Court, the operation and effect of that part of said decree contained in said First Paragraph of said decree and the injunction granted thereby, or in pursuance thereof, be stayed and suspended until the determination of said appeal by the Supreme Court of the United States.

W. M. LANNING,
Circuit Judge.

Attest:

——— ———.

903 In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

UNITED STATES OF AMERICA, Plaintiff,
vs.
THE READING COMPANY and Others, Defendants.

Bond.

Filed February 9, 1911.

Know all men by these presents, that the Reading Company, the Philadelphia & Reading Railway Company, The Central Railroad of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna and Western Railroad Com-

pany, the Mount Lookout Coal Company, and the Lackawanna Coal Company, Limited, as Principals, and United States Fidelity and Guaranty Co. as Surety, are held and firmly bound unto the United States of America in the sum of Two thousand dollars ($2,000), to be paid to the said United States of America, and for the payment of which well and truly to be made we and each of us do bind ourselves, and our and each of our successors and assigns, jointly
904 and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of February 1911.

Whereas, the above entitled cause has been so proceeded with that on the 20th day of December 1910, a decree was rendered and entered therein in the Circuit Court of the United States for the Eastern District of Pennsylvania, directing an injunction to issue as therein set forth;

And whereas, the parties principal to this bond have prosecuted an appeal to the Supreme Court of the United States to reverse certain specified parts of the decree so rendered and entered in said cause.

Now the condition of this obligation is such, that if the said appellants shall prosecute their said appeal with effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; but otherwise shall remain in full force and virtue.

Signed, sealed and delivered in the presence of

READING COMPANY, [SEAL.]
(Sgd.) By GEO. F. BAER, *President.*

Attest:
WM. R. TAYLOR, *Secretary.*

[SEAL.] PHILADELPHIA & READING RAILWAY CO.,
(Sgd.) By GEO. F. BAER, *President.*

Attest:
WM. R. TAYLOR, *Secretary.*

[SEAL.] THE CENTRAL RAILROAD OF NEW JERSEY,
By GEO. F. BAER, *President.*

Attest:
G. O. WATERMAN, *Secretary.*

905 THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
(Sgd.) By W. H. TRUESDALE, *President.* [SEAL.]

Attest:
A. D. CHAMBERS, *Secretary.*

LEHIGH VALLEY RAILROAD COMPANY, [SEAL.]
(Sgd.) By E. B. THOMAS, *President.*

Attest:
E. A. ALBRIGHT,
Ass't Secretary.

ERIE RAILROAD COMPANY, [SEAL.]
(Sgd.) By F. D. UNDERWOOD, *President.*

Attest:
DAVID BOSMAN, *Secretary.*

THE NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY,
(Signed) By F. D. UNDERWOOD, *President.* [SEAL.]

Attest:
DAVID BOSMAN, *Secretary.*

MOUNT LOOKOUT COAL COMPANY,
(Signed) By A. F. LAW, *President.* [SEAL.]

Attest:
A. M. BINGHAM, *Secretary.*

LACKAWANNA COAL COMPANY, LIMITED,
By A. F. LAW, *Chairman.* [SEAL.]

Attest:
A. M. BINGHAM, *Secretary.*

[SEAL.] UNITED STATES FIDELITY AND GUARANTY COMPANY,
By HENRY STROUSE,
Resident Vice-President.

Attest:
EDWARD J. FISHER,
Resident Secretary pro Tem.

The within bond approved as to form and sufficiency Feb. 8, 1911.
W. M. LANNING,
Circuit Judge.

906 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, plaintiff, through Hon. George W. Wickersham, Attorney General of the United States:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, within thirty days, pursuant to an appeal filed in the

Clerk's office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein the Reading Company, the Philadelphia & Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company and the Lackawanna Coal Company, Limited, are appellants and you are appellee, to show cause, if any there is, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William M. Lanning, Judge of the Circuit Court of the United States this eighth day of February, in the year of our Lord One thousand nine hundred and eleven (1911).

By the Court.

(Signed) W. M. LANNING,
Circuit Judge.

Attest:

———.

Service accepted.
G. CARROLL TODD,
Attorney for Appellee.

907 In the Circuit Court of the United States, Eastern District of Pennsylvania, April Sessions, 1907.

In Equity. No. 27.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
READING COMPANY et al., Defendants.

Præcipe Sur Transcript of Record Sur Appeal of Reading Company et al.

Filed Feb'y 11, 1911.

SIR: In making up the transcript of record to the Supreme Court of the United States in the above entitled action sur appeal of Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, Mount Lookout Coal Company and Lackawanna Coal Company, Limited, you are directed to include the following papers and no others, to wit:

1. Petition of Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The

Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, Mount Lookout Coal Company and Lackawanna Coal Company, Limited, for allowance of appeal and supersedeas.

2. Assignment of Errors by Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, Mount Lookout Coal Company and Lackawanna Coal Company, Limited.

908 3. Order allowing appeal and supersedeas to Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, Mount Lookout Coal Company and Lackawanna Coal Company, Limited.

4. Appeal bond of Reading Company, Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, The Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, Mount Lookout Coal Company and Lackawanna Coal Company, Limited.

5. Citation.

CHAS. HEEBNER,
Per W. L. KINTER,
Solicitor for Reading Company and Philadelphia and Reading Railway Company.

To Clerk C. C. U. S., E. D. of Pa.

909 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Henry B. Robb, Clerk of the Circuit Court of the United States of America for the Eastern District of Pensylvania, in the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original Pleas and proceedings in the case of United States of America v. The Reading Company, and others, No. 27, April Session, 1907, as per præcipe filed, a copy of which is hereto annexed, on file and now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this eleventh day of February in the year of our Lord one thousand nine hundred

and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

[Seal Circuit Court of the United States, E. D. Pennsylvania.]

HENRY B. ROBB,
Clerk of C. C.,
By GEORGE BRODBECK,
Deputy Clerk.

Endorsed on cover: File No. 22,467. E. Pennsylvania C. C. U. S. Term No. 846. The United States, appellant, vs. The Reading Company, The Philadelphia & Reading Railway Company, et al. Filed January 5, 1911. File No. 22,480. Term No. 859. The Temple Iron Company, appellant, vs. The United States. Filed January 14, 1911. File No. 22,522. Term No. 901. The Reading Company et al., appellants, vs. The United States. Filed February 13th, 1911. File Nos. 22,467, 22,480, and 22,522.

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